

Andrea St. Julian, Co-Chair  
Maresa Talbert, Co-Chair



5694 Mission Center Rd.  
Ste 602-356  
San Diego, CA 92108

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**RE: San Diego County Citizens' Law Enforcement Review Board (CLERB) Strengths and Opportunities Assessment Commissioned by San Diegans for Justice**

Dear Community Members, Elected Officials, and Interested Parties,

Over the last three decades since the creation of CLERB, numerous reports of dangerous and deadly conditions in county jails; misconduct, harassment, and abuse by deputy sheriffs; as well as mismanagement of CLERB's caseload has left the San Diego County community disappointed by CLERB's inability to hold the Sheriff's Department accountable. In this regard, despite the existence of CLERB, San Diego County has the highest jail mortality rate among California's largest counties.

In December 2021, San Diegans for Justice, the community organization behind the creation of the Commission on Police Practices in the City of San Diego, commissioned a report from University of Chicago Law School Professor and renowned civilian oversight expert, Sharon R. Fairley, to provide a comprehensive analysis of civilian oversight of the San Diego County Sheriff's Department. The result was Professor Fairley's CLERB Strength and Opportunities Assessment.

Professor Fairley's Assessment recommends a number of actions that should be taken by CLERB and the San Diego County Board of Supervisors to strengthen oversight, better equip CLERB staff and members, increase CLERB transparency, and better serve the community at-large. The following is a list of the most important recommendations that must be addressed.

- (1) Improve the independence and timeliness of CLERB's investigative process;
- (2) Enforce CLERB's subpoena power and the County's duty to cooperate;
- (3) Increase CLERB's resources to fund more investigative manpower and to bring important subject matter expertise in-house;
- (4) Enhance the transparency of CLERB's Board Member selection process and clarify the criteria for appointment to enhance community representation;
- (5) Ensure CLERB's case review process reflects a rigorous review of the key reports and evidence; and,
- (6) Find ways to increase transparency about CLERB's work either within the current legal framework or through a progressive legislative agenda.

We are looking forward to working closely with Chair Nathan Fletcher and the County Board of Supervisors to adopt Professor Fairley's recommendations, and ensure CLERB more effectively serves our communities.

In solidarity,

Andrea St. Julian  
Co-Chair, San Diegans for Justice

Maresa Talbert  
Co-Chair, San Diegans for Justice

The background of the cover is a photograph of the San Diego County Courthouse at night. The building is illuminated, showing its grand architecture with a large central dome and classical columns. The sky is dark blue. A semi-transparent white box is overlaid on the image, containing the title and subtitle. In the top right corner of the dark blue header, there is a vertical lime green bar.

# San Diego County Citizens' Law Enforcement Review Board

ASSESSMENT OF STRENGTHS AND OPPORTUNITIES

Prepared for San Diegans for Justice  
December 2021

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## INTRODUCTION

### *Background*

San Diego, as a public-safety minded community, has embraced the concept of civilian oversight of law enforcement over a period of decades. The city of San Diego has had a civilian entity responsible for oversight of the municipal police department since the mid 1980's. Most recently, city voters approved Measure B, which led to the replacement of the city's Community Review Board on Police Practices with a new independent commission, the Commission on Police Practices. The ballot initiative was sponsored by San Diegans for Justice, a community organization that had the support of a broad coalition of citizens, community groups, and community leaders.

Civilian oversight of the San Diego county-based law enforcement was initiated in 1990 when the San Diego County Board of Supervisors passed an ordinance creating the Citizens Law Enforcement Review Board ("CLERB" or "the Board"). CLERB was created to operationalize a voter initiative sparked by numerous allegations of abuse in county jails. The CLERB is intended to enhance accountability for the San Diego County Sheriff's Department ("SDSD") and the San Diego County Probation Department ("SDCPD").<sup>1</sup> The 11-member board was given the power to receive and investigate citizen complaints of misconduct and to investigate deaths arising from activities of peace officers and custodial officers.<sup>2</sup> However, the ordinance explicitly states that the Board is "advisory only" and has no operational or policy-making powers.<sup>3</sup>

Almost since its inception, community members have expressed disappointment with the Board's effectiveness and concerns about its lack of power.<sup>4</sup> According to a six-month investigation conducted by the San Diego Union-Tribune, San Diego County has the highest jail-mortality rate among California's largest counties.<sup>5</sup> In addition, the CLERB has historically struggled to manage its caseload.<sup>6</sup> In June 2020, the County Supervisors voted to expand the Board's oversight and investigative powers.<sup>7</sup> The CLERB is now permitted to review and investigate officer-involved

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<sup>1</sup> San Diego County Code of Administrative Ordinances, Article XVIII § 340, et. seq. (hereinafter, "Sec. 340"; Charles T. Clark, *San Diego County will restructure, expand powers of its independent law enforcement oversight group*, DEL MAR TIMES, Jun. 24, 2020 5:30am, available at: <https://www.delmartimes.net/news/story/2020-06-24/san-diego-county-to-restructure-and-expand-the-powers-of-it-independent-law-enforcement-oversight>.

<sup>2</sup> Sec. 340.9(a)

<sup>3</sup> Sec. 340.

<sup>4</sup> Clark, *supra* note 1.

<sup>5</sup> Jeff McDonald, *Chula Vista man dies in San Diego County jail, seventh in-custody death this year*, SAN DIEGO UNION-TRIBUNE, Jul. 21, 2021, available at: <https://www.sandiegouniontribune.com/news/watchdog/story/2021-07-21/chula-vista-man-dies-in-san-diego-county-jail-seventh-in-custody-death-this-year>.

<sup>6</sup> Clark, *supra* note 1 (noting that the Board's budget was just over one-tenth of one percent of the Sheriff's Department budget).

<sup>7</sup> Clark, *supra* note 1.

shootings and use of force incidents resulting in great bodily injury without a formal complaint having been filed.<sup>8</sup> In addition, the community was granted a greater say in who sits on the board.<sup>9</sup>

San Diegans for Justice is now working toward enhancing the structure and powers of the CLERB to provide more effective and transparent oversight of the San Diego County Sheriff’s Department and Probation Department (“the Departments”).

***Project Overview***

San Diegans for Justice has requested assistance with an assessment of the strengths and opportunities for improvement regarding CLERB’s current structure and powers as input to deliberations regarding potential ways to enhance the independence, effectiveness and transparency of the civilian oversight provided for the Departments.

The primary purpose of this project is to evaluate the structure and powers of CLERB based on generally recognized key success factors for civilian oversight and to provide benchmarking information based on research and data on civilian oversight structures and functions at the municipal and county level.

This assessment of the current structure and operations of CLERB is based on a review of the governing documents (ordinances, county code, and published rules and regulations), publicly available agency work product (agency reports, correspondence, website content) and information provided by the current CLERB Executive Director Paul Parker who provided additional perspective and agency documents.

The following assessment is organized around the following areas of inquiry:



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<sup>8</sup> Clark, *supra* note 1.

<sup>9</sup> Clark, *supra* note 1.

## ***Key Findings***

Having been established in 1990, CLERB is among the oldest civilian oversight entities in existence. At the time of its creation, the scope of the powers and duties assigned to CLERB in its establishing ordinance were quite ground-breaking. On paper, CLERB has the power to conduct independent investigations and to issue subpoenas to secure the production of documents and the appearance of witnesses.<sup>10</sup> These independent investigatory powers are supposed to be supported by a duty to cooperate on the part of all County employees.<sup>11</sup> However, almost immediately CLERB faced obstacles in pursuit of its mission. Some of these impediments are a result of less than full cooperation from the Departments, others have emerged from California law governing police disciplinary records and processes.

Today, there is substantial opportunity to improve CLERB's ability to fulfill its mission within the complex and evolving legal and political environment in which it operates. Although there are several ways to enhance CLERB's oversight effectiveness through revisions to its authorizing ordinance, there are also a number of potentially positive and productive operational changes that can be made within the entity's current legal construct. The key areas of potential improvement include:

- Improving the independence and timeliness of CLERB's investigative process;
- Enforcing CLERB's subpoena power and the County's duty to cooperate;
- Increasing CLERB's resources to fund more investigative manpower and to bring important subject matter expertise in-house;
- Enhancing the transparency of the Board's selection process and clarifying the criteria for appointment to the Board to enhance community representation;
- Ensuring the Board's case review process reflects a rigorous review of the key reports and evidence; and
- Finding ways to increase transparency about the Board's work either within the current legal framework or through a progressive legislative agenda.

This consulting project was conducted primarily based on publicly available records and information. Although the author refers to legal authority where appropriate, this report is not legal advice and is not intended to serve as a legal opinion as to the matters discussed.

## **I. JURISDICTIONAL SCOPE & POWERS**

### **A. SUBJECT MATTER JURISDICTION**

#### **1. Complaint types**

By ordinance, CLERB is empowered to investigate complaints alleging excessive force, discrimination or sexual harassment, improper discharge of firearms, illegal search or seizure, false

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<sup>10</sup> Sec. 340.9(a) and Sec. 340.11.

<sup>11</sup> Sec. 340.15 ("In the discharge of its duties, the Review Board shall receive complete and prompt cooperation from all officers and employees of the County.")

arrest, false reporting, criminal conduct, or misconduct.<sup>12</sup> Consistent with that of other civilian oversight entities with investigative authority, this subject matter jurisdiction covers the types of abuse of power for which independent review is desirable. Moreover, the types of complaints CLERB is empowered to investigate are quite varied because the jurisdictional scope includes “misconduct” which is broadly defined to include “any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific citizen” involving a violation of a Department rule or order, state or federal law, or any improper or unbecoming conduct. If future changes are made to CLERB’s subject matter jurisdiction, the County might consider explicitly stating that allegations of domestic violence would fall within CLERB’s subject matter jurisdiction.

The County might also consider incorporating the concept of pattern and practice investigations into CLERB’s subject matter jurisdiction.<sup>13</sup> As the agency responsible for complaint intake and review, CLERB has visibility on patterns and trends related to certain kinds of misconduct. CLERB should be empowered to investigate and report on such patterns and trends, in the absence of a signed complaint.<sup>14</sup> This may be a particularly valuable power in the context of oversight of activities that occur in the jails.

## **2. Incident Types**

In 2020, the County expanded CLERB’s subject matter jurisdiction to include certain kinds of incidents involving sworn members of the Departments. More specifically, at present, CLERB may investigate four types of incidents: (1) death incidents; (2) firearms discharge incidents; (3) use of force incidents resulting in great bodily injury; and (4) use of force incidents at protests or other events protected by the First Amendment.<sup>15</sup> This jurisdictional scope is generally consistent with that of other civilian oversight entities with an investigative focus.

## **3. Litigation-based Inquiries**

The County might also consider expanding CLERB’s jurisdiction to afford CLERB the discretion to investigate allegations of misconduct that fall within CLERB’s subject matter jurisdiction for which there is no complaint, but for which a lawsuit or claim against a Department or an individual Department member was resolved by a judgment or settlement. Review of litigation against a

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<sup>12</sup> Sec. 340.9.

<sup>13</sup> Although Sec. 340.9(c) currently states that the Board may prepare “recommendations relating to any trends in regard to employees involved in citizen complaints,” the language could be amended to more clearly designate the power to investigate and make recommendations regarding patterns and practices of misconduct by individual employees, groups of employees, or the Departments as whole.

<sup>14</sup> For example, Chicago’s Civilian Office of Police Accountability is empowered to “conduct investigations to determine whether members of the Police Department are engaging in patterns or practices of misconduct, and, where a pattern or practice of misconduct is found, recommend revisions to the Police Department’s policies, practices, programs, and training in order to address and eliminate such patterns or practices.” City of Chicago Municipal Code Section 2-78-120(n).

<sup>15</sup> Sec. 340.9(b).

Department can provide a source of valuable information regarding gaps in policy and problematic practices.<sup>16</sup>

## B. PERSONAL JURISDICTION

CLERB's current mandate is limited to jurisdiction over certain complaints and incidents involving "peace officers or custodial officers employed by SDSO or the SDPD."<sup>17</sup> This personal jurisdiction is narrower in scope than that of other investigative oversight entities that have personal jurisdiction over *all* employees of the law enforcement agency being overseen.<sup>18</sup> Because there are other unsworn professional staff members that play an important role in the services provided by the SDSO and SDCPD, expansion of CLERB's personal jurisdiction to include certain key professional classes, such as medical personnel and other unsworn personnel at the jails operated by SDSO, should be considered.

## C. INVESTIGATIVE POWERS

CLERB is empowered to conduct independent investigations of the matters within its jurisdiction. On paper, CLERB's investigative process is supported by subpoena power. However, the reality is, this power is infrequently exercised. Similarly, by ordinance, all County employees have a duty to cooperate with CLERB investigations, but this duty is rarely enforced. Enforcement of CLERB's subpoena power and the duty to cooperate among County employees, including SDSO deputies, could greatly enhance CLERB's independent fact-finding capabilities, and thus the quality of its investigative outcomes and disciplinary recommendations. In addition, as will be discussed further below, CLERB could also enhance the quality of its investigative process by obtaining reports and material from SDSO in a timelier fashion, either by pursuing direct access to SDSO information systems, or by enforcing the duty to cooperate by insisting on immediate notifications and production of reports.

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<sup>16</sup> See, e.g., Office of the Inspector General for the NYPD, *2019 Assessment of Litigation Data Involving NYPD*, April 2019, available at:

[https://www1.nyc.gov/assets/doi/reports/pdf/2019/Apr/13LitData\\_pressrelease\\_report\\_43019.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2019/Apr/13LitData_pressrelease_report_43019.pdf)

(leveraging data on civil lawsuits to make recommendations regarding NYPD's early intervention system).

<sup>17</sup> Sec. 340.9(a).

<sup>18</sup> See, e.g., King Cty. (WA) Code Sec. 2.75.020 (noting that the investigative agency provides "independent civilian oversight of the sheriff's office *and all of its employees.*") (emphasis added); Los Angeles County Code Section 6.44.190 (stating that the L.A. Office of Inspector General is authorized to provide comprehensive oversight of the Sheriff's Departments and the Probation Department as well as their contractors and employees); Orange Cty. (CA) Code Sec. 1-2-225 (noting that the Office of Independent Review may review the performance and operations of each of the agencies within its jurisdiction, without specifying the oversight is limited to sworn personnel); Nassau Cty. (NY) Code Sec. 2004 (noting that the Board of Visitors may review or investigate inmate complaints or grievances related to jails operated by the Sheriff, without limiting such review to sworn personnel); Santa Clara Cty. Code Sec. A20-63(b) (noting the Office of Correction and Law Enforcement Monitor has the power to monitor and report about the departments, employees and contractors related to law enforcement, jail operations, and jail facilities, including the provision of health services in the jails).



## D. DISCIPLINARY RECOMMENDATIONS

By ordinance, CLERB is empowered to make “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.”<sup>19</sup> These recommendations are non-binding on the Departments, which is not unusual in the context of civilian oversight.<sup>20</sup>

The power to make disciplinary recommendations is an important oversight function that culminates an independent investigation. The purpose of empowering a civilian oversight entity to conduct independent investigations of misconduct is to have an unbiased and community voice in how incidents of misconduct are resolved. CLERB has not exercised the full extent of its power to make independent disciplinary recommendations because the Departments have not provided CLERB with access to records upon which such recommendations would be based. Access to the relevant law enforcement personnel records is necessary to inform disciplinary recommendations.<sup>21</sup> Currently, CLERB has limited access to information regarding discipline imposed by SDSA in individual cases. Without such information, CLERB is unable to make disciplinary recommendations that are specific to the individual employee and misconduct at issue. As such, at the conclusion of an investigation in which allegations have been sustained against a Department member, CLERB does not make a specific disciplinary recommendation, rather CLERB’s current practice is to make a generic recommendation that the appropriate progressive discipline be imposed.

It appears that CLERB has read California law to preclude access to most, if not all, disciplinary records of individual peace or corrections officers.<sup>22</sup> Recent amendments to the relevant statutory scheme, namely California Senate Bill No. 1421 passed in September of 2018 and California Senate Bill 16 passed in September 2021, have opened access to many, but not all disciplinary records relevant to CLERB’s mission.<sup>23</sup>

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<sup>19</sup> Sec. 340.9(c).

<sup>20</sup> Michael Vitoroulis, Cameron McElhiney, and Liana Perez, *Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices*, U.S. Dept. of Justice, Office of Community Oriented Policing Services (2021) (hereinafter “NACOLE 2021 Effective Practices Report”), at 41.

<sup>21</sup> NACOLE 2021 Effective Practices Report, *supra* note 20, at 95 (“If an oversight agency is authorized to issue disciplinary recommendations, it should be provided with a copy of the full investigation and evidence, disciplinary protocols and documentation, and subject officer personnel records (if permitted and applicable in the jurisdiction)).

<sup>22</sup> Prior to 2018, California Penal Code Section 832.7 required that disciplinary records were kept confidential and were subject to disclosure in limited circumstances related to criminal and civil litigation.

<sup>23</sup> In 2018, California enacted Senate Bill 1421 which allowed for public disclosure of records related to certain critical incidents such as those involving a firearms discharge or a use of force resulting in death or bodily injury. The law also allowed access to records related to certain kinds of sustained allegations including but not limited to, allegations of sexual assault. In 2021, with Senate Bill 16, the state legislature then greatly expanded the types of sustained allegations for which personnel records would be made publicly available to include, for example, all cases resulting in a sustained finding of excessive force.

Going forward, CLERB should pursue all disciplinary records that are to be made publicly available from the Departments to facilitate the fulfillment of CLERB’s duty to make specific disciplinary recommendations. It may be also appropriate to incorporate access to disciplinary records into CLERB’s ordinance. For example, the establishing ordinance for the Los Angeles Sheriff Office of Inspector General states “[t]he Departments and their employees and all other County departments shall cooperate with the OIG and promptly provide any information or records requested by the OIG, including confidential peace officer personnel records ... necessary for the OIG to carry out its duties.”<sup>24</sup>

To the extent that the current state law does not allow for complete access to disciplinary records, CLERB could seek aggregated de-identified information to help guide its disciplinary recommendations. For example, the Departments could regularly (at least annually) provide CLERB with data on the average or range of suspensions (or other disciplinary action) for various forms of misconduct or rule violations that CLERB can use as the basis for its disciplinary recommendations. Such aggregated information would not be subject to the state law restricting disclosure of disciplinary records because they would fall outside of the statutory definition of “personnel records.”<sup>25</sup>

CLERB can also review its own records to assess an individual SDSA or SDCPD employee’s history of misconduct allegations and findings, to ensure that any such history is reflected in its reports where allegations of misconduct have been sustained.

In addition, if either agency has a disciplinary matrix, that information should be provided to CLERB to inform disciplinary recommendations.<sup>26</sup>

## E. POLICY RECOMMENDATIONS

Like many civilian oversight entities, CLERB is empowered to make non-binding policy recommendations.<sup>27</sup> The power to influence policy has been one of the primary mechanisms through which civilian entities influence the quality of law enforcement.<sup>28</sup> In recent years, CLERB

<sup>24</sup> Los Angeles County Code Section 6.44.190(I).

<sup>25</sup> *Copley Press, Inc. v. Superior Ct.*, 39 Cal. 4th 1272, 1285 (2006) (“a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints ... made against its officers if that information is in a form which does not identify the individuals involved.”) (hereinafter “*Copley Press*”).

<sup>26</sup> For example, the San Francisco Police Department makes its Disciplinary Penalty & Referral Guidelines publicly available. See San Francisco Police Commission website, available at: <https://sfgov.org/policecommission/sites/default/files/Documents/PoliceCommission/Disciplinary%20Penalty%20and%20Referral%20Guidelines%202021821.pdf>.

<sup>27</sup> Sec. 340.9(g) (noting that CLERB has the power to “[r]eview and make recommendations on policies and procedures of the Sheriff’s Department and the Probation Departments to the Board of Supervisors, the Sheriff, and the Chief Probation Officers.”).

<sup>28</sup> NACOLE 2021 Effective Practices Report, *supra* note 20, at 41 (“Because the majority of law enforcement agencies subject to civilian oversight retain final authority over policy and discipline, non-binding recommendations have typically been the primary mechanism through which civilian oversight agencies have been able to influence the law enforcement agencies they oversee.”)

has demonstrated consistent use of this power. Although there is no legal requirement to do so, at this time, SDSD generally responds to CLERB’s policy recommendations. CLERB publicizes its policy recommendations and the Departments’ responses in its reports. This is important for transparency.

## II. POLICIES & PROCEDURES

### A. INVESTIGATIVE PROCESS

Because access to CLERB investigative files are maintained as confidential, the comments below are based on publicly available information, reports and policy statements.

#### 1. Complaint Intake

The complaint intake process is most successful when barriers to filing a complaint are minimized to the extent possible. The National Association for Civilian Oversight of Law Enforcement (“NACOLE”) lists a “barrier-free complaint process” as an important “effective practice” of civilian oversight.<sup>29</sup> Although CLERB’s process appropriately allows complaints to be lodged in several ways (phone, snail-mail, email, and in person) by ordinance, CLERB can only investigate complaints for which there is a written complaint signed under penalty of perjury.<sup>30</sup> This requirement may have been intended to ensure the reliability of the complaints CLERB investigates. Nonetheless, it is a significant impediment to the fulfillment of CLERB’s mission because many potentially valid complaints are not being investigated. There are a significant number of complaints that are “lodged” with CLERB but are not investigated due to the lack of a written complaint signed under penalty of perjury.<sup>31</sup>

It appears that CLERB’s current practice is to require a “wet signature” on the required complaint form. The actual hard-copy signed form can be returned to CLERB in-person or by mail. CLERB will also accept an electronic copy of the signed form by fax or email.<sup>32</sup> However, some complainants, such as jail detainees, may not have the time or resources to print out the form, sign it, then find a way to get the form back to CLERB.

The signature requirement combined with the requirement that the signature be made under penalty of perjury is particularly onerous. The threat of a penalty for perjury is a significant barrier. Other oversight entities have found a way to discourage frivolous complaints without going this far. For example, the online form for complaints made to the Los Angeles County Office of Inspector

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<sup>29</sup> NACOLE 2021 Effective Practices Report, *supra* note 20, at 77 (“Unless required by state law, the complaint process should not require individuals to notarize a complaint, sign an affidavit, or issue statements under penalty of perjury, nor should it threaten potential prosecution for false statements.”)

<sup>30</sup> Sec. 340.9(a) (“All action complaints shall be in writing and the truth thereof shall be attested under penalty of perjury.”)

<sup>31</sup> According to CLERB’s 2020 Annual Report, of the 139 cases closed in 2020, 85 were fully investigated, while 48 were closed for lack of a signed complaint. CLERB 2020 Annual Report, at 13-14.

<sup>32</sup> CLERB website instructions for filing a complaint available at:

<https://www.sandiegocounty.gov/content/dam/sdc/clerb/docs/complaint-form/WebComplaint.pdf>.

General regarding Los Angeles County Sheriff’s Department members merely asks a complainant to check a box to attest that the information they provided is “true and correct.”<sup>33</sup>

Unless and until the ordinance is amended to dispense with the signature requirement, there are steps CLERB can take to address this challenge. First, CLERB could consider creating a web interface process for completing an online complaint form that incorporates an electronic signature. If that is not possible, to ensure that as many valid complaints as possible under the current ordinance are pursued, CLERB investigators should be expected to and provided the time and resources to travel to meet with complainants for the purpose of facilitating the complaint filing process. CLERB Rules should explicitly state the nature and scope of the steps investigators are expected to make before dismissing a complaint that has been lodged but not signed under penalty of perjury, or for lack of cooperation by the complainant.

Unless legally required, complainants should not be asked to complete an attestation that they will not subpoena CLERB for records related to the complaint. This could have a chilling effect on complaints being filed. Complainants may be confused by this requirement and refuse to sign a complaint for fear of giving up a legal right. Similarly, lawyers advising complainants might also discourage complainants from submitting a complaint for fear of waiving a legal right.

CLERB should consider providing additional resources to facilitate the filing of complaints by individuals who do not speak either English or Spanish and persons with disabilities.

## 2. Preliminary investigations

The preliminary investigative steps taken in a misconduct investigation are crucial to the evidence collection process. There are certain kinds of evidence that can be lost if not captured in the first few hours or days following an event giving rise to a complaint or an incident within CLERB’s jurisdiction. It is essential that CLERB take all necessary steps to ensure that the investigation of critical incidents is thorough and reflective of all available evidence.

In October 2021, CLERB issued a policy recommendation requesting that SDSA revise its critical incident response policy to incorporate immediate notification of CLERB and to allow a CLERB investigator access to the scene of the incident.<sup>34</sup> Although historically this may have not been the case, currently SDSA notifies CLERB within hours of “deaths arising out of or in connection with actions of peace officers or custodial officers.”<sup>35</sup> Yet, these notifications occur after the death scene has been processed by SDSA and other involved investigative entities obviating any opportunity for CLERB to initiate its own independent investigation at this critical time.<sup>36</sup> Also a challenge for CLERB is the fact that SDSA typically takes months to respond to CLERB

<sup>33</sup> County of Los Angeles, Office of Inspector General, online Commendation/Complaint form.

<sup>34</sup> CLERB Policy Recommendation: CLERB Response to San Diego Sheriff’s Department Scenes of Death under CLERB’s jurisdiction, Oct. 5, 2021 (hereinafter “CLERB Policy Recommendation Oct. 5, 2021) (Appendix H).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* (listing the involved entities as SDSA Homicide Division, SDSA Division of Inspectional Services, SDSA Internal Affairs, SDSA Detentions Investigations Unit (when applicable), SDSA Crime Laboratory, District Attorney’s Office, and Medical Examiner’s Office.)

subpoenas for records related to these incidents because they do so only after the SDSA homicide investigation has been completed.<sup>37</sup> As such, CLERB lacks sufficient information to initiate its independent investigation until it has received this information. This often results in delays of weeks or months during which no investigative work to assess a critical incident is accomplished. This is definitely not reflective of best practices in civilian oversight because it undermines the independence of CLERB's investigatory process; CLERB is merely able to review the investigative work product produced by SDSA.<sup>38</sup>

The most effective independent investigations of critical incidents involve the investigative agency responding to the scene of such incidents as soon as possible to perform investigative activities that are critical to the timely collection of relevant evidence. Other California oversight agencies are permitted to do this.<sup>39</sup>

Pursuant to SDSA Procedure Section 8.2, governing the discharge of firearms by Department members, there is a notification system in place by which the Department's Communication Center notifies personnel on the "critical incident notification checklist."<sup>40</sup> The CLERB should request that one or more members of the CLERB investigative team be added to this list. Notification could be made to the Executive Director, or to an "on-call" investigator, who will then notify the investigative staff members who are responsible for responding to the scene. There should be at least two CLERB investigators who respond to the scene to accomplish the following objectives:

- Obtain the initial narrative of events;<sup>41</sup>
- Observe the collection of evidence;
- Conduct witness interviews on or near the scene as necessary and appropriate; and
- Conduct CLERB's preliminary investigative activities as necessary, such as canvassing for witnesses and third-party video.

It is essential that CLERB have the opportunity to conduct independent witness interviews. There are some witnesses who may feel more comfortable talking to an investigator that is not a sworn deputy or member of law enforcement. Often, access to witnesses is accomplished most efficiently by having at least some initial contact at the scene of an incident.<sup>42</sup>

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<sup>37</sup> CLERB Police Recommendation Oct. 5, 2021, *supra* note 34.

<sup>38</sup> *Id.* (noting for example, that CLERB is not afforded the opportunity to witness the evidence gathered as it existed at the scene, and is sometimes stymied in its ability to interview witnesses).

<sup>39</sup> The Los Angeles Office of Inspector General responds to the scenes of deputy-involved shooting incidents, receives information at the walk-through at the scene and attends the Critical Incident Review. Reform and Oversight Efforts: Los Angeles Sheriff's Department, Jan. to Mar. 2021, Los Angeles Office of Inspector General, at 8.

<sup>40</sup> SDSA Policy 8.2 Discharge of Firearms (Appendix F).

<sup>41</sup> Pursuant to SDSA Policy Section 8.2, for firearms discharge incidents in which a deputy or suspect was injured or killed, the involved deputies are required to provide a "safety statement" to the Patrol/Detective Sergeant who responds to the scene.

<sup>42</sup> As noted in CLERB's request, the delay in information access impairs the investigative process because later "attempts to independently contact witnesses are often fruitless because witnesses are no longer available or unable to be located.") CLERB Policy Recommendation, Oct. 5, 2021, *supra* note 34.

### 3. Information Access

Access to department records, databases and facilities is essential to effective and timely oversight.<sup>43</sup> Direct access enhances timeliness and independence of oversight.<sup>44</sup> The importance of timely access to records and information is reflected in the fact that many jurisdictions make access to information an explicit requirement when establishing an oversight entity. For example, the ordinance establishing the Santa Clara Office of Correction and Law Enforcement Monitoring (“OCLEM”) requires that the Sheriff’s Office supply the information and records the OCLEM requests to fulfill its mission.<sup>45</sup> Moreover, the ordinance requires that OCLEM establish written protocols for the exchange of confidential information.<sup>46</sup> Nonetheless, the issue of access to reports, documents and information, even where required by an establishing ordinance, is often a source of conflict between a law enforcement agency and its oversight entity. Despite the language of the ordinance, the Santa Clara OCLEM and Sheriff remain at odds over access to information and the OCLEM has reluctantly entered into an agreement with the Sheriff that affords less than optimal access, because some access is better than none.<sup>47</sup>

CLERB’s access to Department reports and information has clearly been a challenge from the very beginning. CLERB has never had direct access to Department reports and information and must rely on the Departments to provide the information upon request, which requests may or may not be fulfilled in a timely manner. CLERB should seek direct access to the Department’s reports and information systems (with appropriate limitations as necessary) to facilitate more timely information access. It is recommended that civilian oversight entities in general, but investigative agencies in particular, have both direct front-end and back-end access to information systems. Front-end access is important for gathering case-specific information. Back-end access can facilitate data analysis that supports both investigative work and policy recommendations.

Based on the current information-sharing protocols, delays in the receipt of information and materials from the Departments have severely reduced the time CLERB has to complete its investigation within the one-year time limit. Although direct access is ideal, at a minimum, CLERB should pursue a memorandum of understanding with the Departments that would secure more timely access to information.

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<sup>43</sup> NACOLE 2021 Effective Practices Report, *supra* note 20, at 43.

<sup>44</sup> NACOLE 2021 Effective Practices Report, *supra* note 20, at 44.

<sup>45</sup> Santa Clara Code of Ordinances § A20-64.(a) (“The Sheriff’s Office, the Department of Correction, Custody Health Services, and all other County agencies/departments shall cooperate with the Office and promptly supply information or records requested by the Office, including, to the extent permitted by law, confidential peace officer personnel records, inmate medical and mental health records, and related records as necessary for the Office to carry out its duties.”)

<sup>46</sup> Santa Clara Code of Ordinances § A20-64.(b) (“The Office shall establish written protocols with the Sheriff’s Office, the Department of Correction, and the County Executive to maintain, access, and disclose confidential information under this Chapter.”)

<sup>47</sup> Michael Gennaco (OCLEM), Updated Report to Board of Supervisors on Status of Information-sharing Protocols, August 30, 2021, at 1 (acknowledging that the OCLEM was entering into a less than optimal information-sharing agreement with the Sheriff because “the limited access to materials that the information-sharing agreement would provide is preferable to the minimal access that has been afforded OCLEM to date.”)

#### 4. Investigative Planning and Management

CLERB should be commended for the significant strides it has made in the last few years in the timely conclusion of investigations. However, timeliness is always a challenge in investigative operations. Although CLERB currently has a practice of publishing monthly caseload reports, it is not clear what additional checks and balances CLERB has in place to help its Executive Director and investigative staff manage the timeliness of ongoing investigations. As noted above, this assessment did not include a review of actual investigative files, thus, CLERB may already be following the recommended investigative practices that follow.

##### *Investigative Planning*

Every successful misconduct investigation starts with a thorough and well-prepared investigative plan. To the extent that this practice is not already in place, investigators should be required to develop investigative plans as part of the preliminary investigative process within the first 7 – 10 days of the initiation of the investigation. The investigative plan should be made a formal part of the case file in the event that another investigator takes over the case. If CLERB does not already have one, it might be helpful for the CLERB team to develop a template that can be used consistently throughout the agency. An investigative plan serves several purposes. An investigative plan outlines the goals of the investigation and frames the evidentiary questions that are to be answered. Importantly, the plan should lay out the necessary investigative steps to demonstrate how they can be accomplished with the one-year statutory time limit. The plan should highlight the critical path elements, and potential contingency plans. For the more serious cases, the Executive Director and/or the Supervising Investigator should sign off on the investigative plan. Although the investigative plan will in large part be driven by the nature and scope of the alleged misconduct, it should also address the incident from a broad perspective by seeking information to assess every aspect of the Departments' handling of the matter. For example, if the initial allegation is against Officer A, but the preliminary investigation shows that Officer B may also have committed misconduct, CLERB should be empowered to assess the conduct of both Officer A and Officer B.

##### *Documenting Investigative Progress*

Once an investigative plan is in place, it should outline the key investigative milestones that will lead to the timely completion of the investigation. It is important that investigators document both progress and the reasons for delays throughout the investigation. No investigative file should go without an entry for more than 14 days. Where investigators are awaiting records or items that have been requested, there should be documentation in the case file regarding the attempts at follow-up and revised timelines for the receipt of such information.

CLERB should be commended for initiating the development of policies outlining investigator responsibilities. The policies recently put in place provide a good foundation for developing a comprehensive set of investigative policies and procedures. It might also be helpful to create an Investigator Manual that provides a roadmap for investigators and sets the expectations for how CLERB executes its investigative responsibilities. There may be other investigative agencies whose manuals are publicly available to serve as guides from which CLERB could develop its own. Or NACOLE may have resources available.

## 5. Witnesses, Subpoena Power & the Duty to Cooperate

### *Compelling Department Witnesses*

Obtaining the testimony of involved Department personnel and independent witnesses is essential to quality misconduct investigations. Currently, CLERB may or may not conduct interviews with non-Department witnesses in person and may or may not record such interviews. It is best practice that such interviews are conducted in person and are recorded, unless the witness declines to do so. This provides the opportunity for the investigator to make visual observations (e.g. photograph wounds or noting physical characteristics of individuals involved in the incident). Importantly, it also provides a better opportunity to observe the witness' demeanor. This could require that CLERB be given additional training, equipment and resources such that investigators are prepared to travel to witnesses to conduct interviews.

By ordinance, CLERB is supposed to receive “*complete and prompt* cooperation from all officers and employees of the County.”<sup>48</sup> (emphasis added). Although this looks great on paper, it does not appear to be happening in reality. Currently, interviews of accused or involved Department personnel are conducted relatively infrequently. Since early on in CLERB's existence, CLERB's authority to compel Department members to sit for interviews pursuant to its investigations has been questioned. Although CLERB's subpoena power has been validated under California law,<sup>49</sup> the enforcement of that power has not recently been tested.

In 1995, CLERB first issued subpoenas to deputies for appearance at public investigative hearings.<sup>50</sup> Although the deputies appeared, they refused to be sworn.<sup>51</sup> Litigation over subpoena enforcement ensued.<sup>52</sup> In 1996, a California judge ruled that CLERB has the authority to enforce its subpoenas and that the deputies would have to appear.<sup>53</sup> However, rather than forcing the issue, CLERB entered into an agreement with the union and SDSA outlining four ways deputies could provide statements in CLERB investigations:

- 1) Deputies could voluntarily provide written or oral statements in confidential CLERB staff interviews; statements are then summarized in reports;
- 2) The Sheriff could compel deputies' participation in CLERB investigations; with deputies being granted *Lybarger* protections;
- 3) The District Attorney could grant prosecutorial immunity; or
- 4) CLERB could subpoena deputies.<sup>54</sup>

<sup>48</sup> Sec. 340.15 (emphasis added).

<sup>49</sup> *Dibb v. County of San Diego*, 36 Cal.Rptr.2d 55 (1994).

<sup>50</sup> San Diego County Citizens' Law Enforcement Review Board, Historical Perspective, March 1989 – June 2017 (hereinafter, “CLERB History”) (Appendix D).

<sup>51</sup> *Id.*

<sup>52</sup> The Deputy Sheriff's Association filed a lawsuit in Superior Court claiming CLERB has no jurisdiction to enforce their subpoena power seeking to prevent officers from being compelling to provide testimony in two specific cases. CLERB History, *supra* note 51.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* (citing *Lybarger v. City of Los Angeles*, 221 Cal.Rptr. 529 (1985)), in which the California Supreme Court held that a police officer who refuses to cooperate in an administrative investigation into possible criminal conduct was entitled to be advised that, although he had the right to remain silent, his silence could



Later that year, the Sheriff made clear that they would not compel deputies to cooperate with CLERB interviews.<sup>55</sup> Litigation over the issue continued through 1997, and in 1998 CLERB reached an agreement with the SDSD and the union that deputies could respond to questioning through interviews or written questionnaires that would be granted confidentiality pursuant to California law governing the privacy of police disciplinary records.<sup>56</sup>

It appears that CLERB has been operating pursuant to this agreement ever since. As such, although some deputies participate in interviews on a voluntary basis, for a majority of cases, CLERB accepts written answers to questions in lieu of an interview.

This is an impediment to quality, independent investigations of misconduct. Making investigatory findings based solely on written responses to questions does not afford the investigator or CLERB any way to assess witness credibility. Moreover, allowing for the submission of written statements from involved Department members creates opportunities for officers to share their responses with each other which could taint, even unintentionally, the information CLERB receives. Moreover, the written responses may or may not be complete, and there may or may not be opportunity to ask follow-up questions. This is definitely one of CLERB's biggest challenges. Other civilian oversight entities operating in California do interview accused and witness peace officers as part of their investigative process.<sup>57</sup> CLERB should explore the legal feasibility of enforcing its subpoena power and duty to cooperate by seeking to interview officers.

### ***CLERB Investigative Hearings***

According to its rules, CLERB is empowered to conduct investigative hearings to facilitate the fact-finding process.<sup>58</sup> In fact, CLERB's Rules and Regulations continue to outline procedures for conducting hearings, in the event that an opportunity for a hearing should arise. However, CLERB has not exercised this power in some time. Although not entirely clear from the available records reviewed for this project, CLERB's decision to forgo public hearings appears to be because it

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lead to discipline, but that any statement made under compulsion could not be used against him in a criminal proceeding).

<sup>55</sup> Clerb History, *supra* note 50.

<sup>56</sup> *Id.*

<sup>57</sup> *See, e.g.*, Riverside Community Police Review Commission Policies & Procedures, adopted Oct 1, 2018, available at:

<https://www.riversideca.gov/cityclerk/sites/riversideca.gov.mayor/files/pdf/2018/CPRC%20Policies%20%26%20Procedures%20100118.pdf> (noting that the Commission may subpoena officers to appear before it to answer questions and provide information); San Francisco Department of Police Accountability website, available at: <https://sf.gov/information/investigations-police-services> (noting that the agency's investigative process includes interviews of officers and other witnesses).

<sup>58</sup> Pursuant to CLERB Rules & Regs Section 9.8, the Board may choose to conduct an investigative hearing or hearings after receipt of an investigative report; pursuant to Section 10.1, a hearing may be conducted upon the request of the complainant, subject officer, executive officer, or a member of the Board. CLERB Rules & Regulations, May 18, 2021 Revision.

believes state law governing the confidentiality of law enforcement disciplinary records prohibits public hearings of law enforcement disciplinary matters.<sup>59</sup>

To the extent that this is the reason behind CLERB's decision to forgo hearings, it certainly does not appear that non-public hearings are prohibited by state law.<sup>60</sup> Moreover, public hearings may be conducted where the officer agrees.<sup>61</sup>

If the current legal framework allows for non-public hearings, CLERB could exercise such power where necessary and appropriate to aid the fact-finding process. Because the procedural rules for investigative hearings are not presently being utilized, they are not the subject of commentary herein. However, it should be pointed out that revisions to the Rules governing investigative hearing procedures are warranted because the current procedures outline the process for a "complainant" to be the party adverse to the officer. This, of course, would not be the case for investigations arising from incidents within CLERB's jurisdiction that are not based on complaints. However, even for investigations arising from complaints, it may not be effective or practicable for a complainant to be responsible for litigating the case before the Board or the Investigative Hearing panel, such responsibility should rest with CLERB staff.

## 6. Internal Investigative Case Review Process

### *Investigative File Review*

Until very recently, the CLERB's staff was limited to an Executive Director and a handful of investigators. The workload required the Executive Director to handle a caseload while also supervising the work of the investigators and fulfilling the other responsibilities required to support the Board. This year, CLERB staffing was expanded to include a Supervising Investigator to assist with case management and supervision, as well as additional new investigators. As will be

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<sup>59</sup> *Berkeley Police Assoc. v. City of Berkeley*, 167 Cal. App. 4th 385 (Cal. Ct. App. 2008) (interpreting *Copley Press* (*supra* note 24) in holding that Berkeley's Police Review Commission was subject to the confidentiality provisions of the California Public Safety Officers Procedural Bill of Rights Act and thus precluded from disclosing police disciplinary records in public hearings).

<sup>60</sup> For example, the Berkeley Police Accountability Board holds hearings on individual matters in closed session. *See, e.g.*, Berkeley Police Accountability Board, Notice of Board of Inquiry Hearing, available at: [https://www.cityofberkeley.info/uploadedFiles/Office\\_of\\_the\\_Director\\_of\\_Police\\_Accountability/PABoard/2485%20BOI%20PublicAgenda%20\(DPA\).pdf](https://www.cityofberkeley.info/uploadedFiles/Office_of_the_Director_of_Police_Accountability/PABoard/2485%20BOI%20PublicAgenda%20(DPA).pdf). *See also*, Long Beach Citizen Police Complaint Commission Bylaws, Adopted Feb. 11, 2016, Article IX, Section 2 ("The hearing process shall be open to the public to the extent legally possible and insofar as it does not conflict with state or federal law, as required by Section 1153 of the City Charter."); Riverside Community Police Review Commission Policies & Procedures, adopted Oct. 1, 2018, at 5 (noting that special meetings are held to conduct officer-involved death case evaluations); San Francisco Department of Police Accountability website, available at: <https://sf.gov/request-investigative-hearing> (noting that complainants can request an investigative hearing after the complaint investigation is complete).

<sup>61</sup> The San Francisco Police Commission holds public evidentiary hearings where the involved officer so requests. City and County of San Francisco Police Commission, Procedural Rules Governing Trial of Disciplinary Cases, at 12, available at: <https://sfgov.org/policecommission/sites/default/files/Procedural.pdf> (noting that police department members may request a public hearing on an appeal or verified complaint).

discussed below, CLERB's current staffing level appears low relative to its peers, but these recent additions are certainly a step in the right direction.

From a quality control perspective, it is important that CLERB have sufficient investigative personnel to allow for more than one staff member to review an investigative file before closing a case to ensure that the summary report and findings are an accurate reflection of the underlying facts and evidence. This second review of the case file might be conducted by either the Supervising Investigator or the Executive Director. The investigator's signature on the final report should be their attestation that the report is an accurate reflection of the underlying evidence. A second staff member should also sign to make the same attestation.

### ***Legal Review***

The legal framework in which police misconduct investigations are conducted is quite complex involving constitutional principles, federal and state statutory and case law, and Department rules. Thus, legal input throughout the investigatory process can be very helpful. If not already doing so, CLERB might consider requiring that cases with complex legal issues, particularly the serious cases involving death or serious injury, be reviewed by legal counsel (as will be discussed below, preferably in-house counsel) before findings are finalized and recommended to the Board.

## **7. Investigative Outcomes**

Because the Departments do not share the ultimate outcome of disciplinary matters with CLERB, there is little or no transparency about the extent to which the Departments respond to or adopt CLERB's disciplinary findings and recommendations. This lack of *transparency* is a fundamental impediment to CLERB's effectiveness as the community is severely limited in its ability to assess the quality and impact of CLERB's work. To the extent that the Departments' unwillingness to share this information is based on California Penal Code Section 832.7 governing the confidentiality of disciplinary records, amendments to that provision no longer limit public access to many, if not, most of the cases falling within CLERB's jurisdiction. CLERB should demand the Departments provide access to all information now legally available for public inspection.

Also, there appears no current legal impediment to the Departments sharing aggregated disciplinary information to CLERB and the public. For example, each Department could provide periodic reporting on the number or percentage of cases in which it took action consistent with or because of CLERB's finding and what kind of disciplinary action was taken by type of allegation.

CLERB could also request participation in the Departments' Critical Incident Review Boards to gain a greater understanding of how the Departments interpret policies and analyze these incidents and to inform its own independent investigations and policy recommendations.

## 8. Communication with Complainants

Communication with complainants is an important part of the investigative process and essential to procedural justice.<sup>62</sup> To reduce the burden of complainant communications on investigative staff, many oversight entities create online resources for this purpose. CLERB could consider creating an online case portal that provides information on the status and outcome of complaint investigations to the extent permissible by law.

### B. OVERSIGHT OF DETENTION FACILITIES

Because CLERB has explicitly been given the authority to review complaints filed against and incidents involving custodial officers as well as peace officers<sup>63</sup>, it is clear CLERB's subject matter jurisdiction extends to conduct occurring in and policy matters arising from the Sheriff's Department's operations within detention facilities. Moreover, by ordinance, CLERB must conduct annual inspections of the County's adult detention facilities and file a report on such inspections. Because these annual inspections may require time and attention from Department members, although perhaps not legally required, the current practice is to provide the Department with advance notice of these inspections.

The County could consider clarifying CLERB's authority to have access to detention facilities as needed to observe specific procedures, gather information, or inspect specific areas within facilities in response to complaint allegations and incidents for investigative purposes. In addition, CLERB could consider pursuing occasional unannounced visits in support of its annual inspection and reporting duties.

### C. POLICY DEVELOPMENT

In recent years, CLERB has been successfully exercising its policy recommendation powers, in particular regarding gaps in policy it observes in the context of individual investigations. SDSO, although not required to do so, has been responding to CLERB's policy recommendations with somewhat regularity. This is positive and should continue. CLERB could consider taking a more strategic approach to policy review that involves gaining community input on the high-level policies of greatest community interest or concern. CLERB could then develop a strategic plan and prioritize the policies that merit community collaboration. Fostering collaboration on policymaking between the community and the law enforcement entity is becoming an increasingly prevalent strategy in civilian oversight.

In addition, CLERB could make better use of its power to recommend policy in an effort to foster more accountability and transparency by the Departments. For example, SDSO Policy 6.138<sup>64</sup> discusses the circumstances under which SDSO will release video and other case-related information related to serious use of force and death incidents. CLERB could explore the extent

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<sup>62</sup> NACOLE 2021 Effective Practices Report, *supra* note 20, at 83 ("The complaint process is more likely to be perceived as fair and transparent if complainants receive regular updates regarding their complaint and can obtain status updates at any time.")

<sup>63</sup> Sec. 340.9(a) and (b).

<sup>64</sup> Appendix C.

to which SDDS is adhering to this policy and provide reporting and recommendations based on its findings.

## **D. BOARD PROCEDURES & DECISION-MAKING**

CLERB has promulgated a set of Rules and Regulations governing its processes and procedures and should be commended for having done so. There are certain topics for which there could be additional discussion.

### **1. Board Member Review of Case Materials**

Because the CLERB Board has the ultimate decision-making power on the outcome of CLERB investigations, it is essential that the Board's engagement with the facts and evidence of a case be as comprehensive as possible. Currently, Board members are encouraged to review case materials in advance of Board meetings at which cases are to be decided. Board members are also encouraged to review certain essential case materials and to ask questions of the investigators. It is important that all Board members have sufficient knowledge of the facts of each case to make an informed decision about the outcome. If Board members do ask questions of investigators, the response to those questions should be shared with all Board members to ensure that all members benefit from the information being shared.

In addition to providing Board members with access to a final summary report and key evidence in cases to be decided, the CLERB investigative team should provide a formal opportunity for Board members to review key evidence (either during or outside of the Board meetings). Also, CLERB could consider requiring Board members to attest to having reviewed the essential case information prior to making the case determination. CLERB could also consider adapting its case management system to document the access and review of case materials by Board members for record-keeping purposes.

These comments are not in any way intended to imply that current board members are not diligently fulfilling their duties. Rather, the point is that these kinds of formal checks and balances can help promote public confidence in the Board's deliberations.

### **2. Executive Director Appointment and Term**

At present, the CLERB Executive Director serves at the pleasure of the Board. However, it is considered a better practice to appoint the head of an oversight entity for a term of years, with removal based solely on cause. This helps to insulate the Executive Director and staff from interference in investigations and from undue influence on the investigative findings. It should be noted that this inquiry revealed no evidence to suggest that the Board has attempted to place any undue influence on the investigative process. The goal is to afford structural independence to the Executive Director and the investigative staff.

The Board might also consider allowing for community input in the selection process for the Executive Director and in the development of the Executive Director's annual performance objectives. Lastly, the Board might also consider adding provisions to its Rules regarding the

appointment of an Acting Executive Director to serve during any vacancies in the Executive Director position.<sup>65</sup>

## **E. BOARD SELECTION PROCESS**

It is important to keep in mind that the primary objective for civilian oversight is to enhance trust and legitimacy within the community. This is most efficiently accomplished when the community believes it has input to who sits on the board, when the selection process is transparent, and when board composition reflects the diversity of the community served.

### ***Board Diversity***

An important aspect of civilian oversight in the form of an oversight board is how well the composition of the board reflects the community served. By ordinance, the CLERB board composition is intended to reflect the “age, sex, socioeconomic status, racial and ethnic background and geographical distribution, including representation of both the unincorporated areas and the cities that contract with the County.”<sup>66</sup> The County’s Chief Administrative Officer is responsible for ensuring that the Board’s makeup fulfills this objective. In addition to the pursuit of demographic and geographic diversity, many jurisdictions are specifying that their boards also include representation from affected communities such as persons with lived experience interacting with law enforcement and the recently incarcerated.

CLERB’s current selection process provides that two board members are selected from each of the five County Supervisory Districts and one at-large member.<sup>67</sup> The ten members representing the Supervisory Districts are selected by the District Supervisor then nominated by the Chief Administrative Officer for approval by the Board of Supervisors. It is not clear whether this geographically-focused selection process is helping or hindering the broader diversity goals. The County might consider increasing the size of the board to accommodate both the desired geographic representation and the participation of individuals reflecting diverse community perspectives and expertise.

### ***Board Selection Process***

Following the County’s recent revisions to the nomination and selection process, community groups now have an opportunity to weigh in on candidates by endorsing them for selection. This is an important and helpful step toward community engagement in this process.

Yet, there remains opportunity for greater transparency around the selection process and criteria. Involving community in the vetting process for board candidates accomplishes two important goals. First, exposing Board candidates to the community perspective during the selection process

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<sup>65</sup> In its May 31, 2018 report, the San Diego Grand Jury noted that the position of Executive Director had “remained vacant at times, impeding the ability of remaining staff to handle investigative workloads.” A Report by the 2017/2018 San Diego County Grand Jury filed May 31, 2018 (hereinafter “2018 Grand Jury Report”).

<sup>66</sup> Sec. 340.3(a).

<sup>67</sup> This appointment approach is not reflected in the ordinance, but rather, it was defined in the recently adopted revisions to the nomination and selection process found on the CLERB website in a document titled “New Board Member Nomination and Selection” (Appendix G).

familiarizes the candidates with the importance of community engagement in the role they are about to take on. Secondly, allowing community to participate in the vetting process engenders less skepticism about the persons who are ultimately appointed.

There also appears a need to streamline the appointment process, as recent vacancies have taken months to fill.<sup>68</sup> Vacancies on the Board place a palpable strain on the sitting Board members who are required to take up the slack.

## F. BOARD COMMITTEES

Many civilian oversight boards choose to delegate certain responsibilities and tasks to either standing or ad hoc committees or subcommittees. CLERB has done this in the past as well but might consider making greater use of committees and subcommittees. CLERB could consider empaneling standing committees to take on some of the Board's regular tasks, while ad hoc committees could take on larger non-recurring projects (e.g., important policy recommendations requiring significant research and/or community engagement).<sup>69</sup>

## III. RESOURCES

Historically, resources have been a significant issue for civilian oversight entities. It is imperative that boards and agencies be afforded the resources necessary to fulfill their statutory responsibilities.

### A. HUMAN

#### 1. Organizational size: Benchmarking analysis

Determining the “right” size for an investigative agency is often a challenge. There can be significant fluctuations in caseloads from year to year as communities experience change in the environment in which law enforcement operates. Many investigative agencies struggle to manage their caseloads as a result of understaffing.

A benchmarking analysis comparing the CLERB staff to those of investigative agencies responsible for overseeing law enforcement agencies of comparable size indicates that CLERB is presently understaffed. However, it is important to note that the civilian oversight entities with investigatory powers similar to those of CLERB with oversight of law enforcement entities of similar size to SDSD are entities that provide oversight of municipal agencies rather than sheriff's offices.

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<sup>68</sup> For example, the San Diego County Grand Jury found that “the Board had not been fully staffed at 11 members for several years.” 2018 Grand Jury Report, *supra* note 65.

<sup>69</sup> See, e.g., Oakland Police Commission 2020 Annual Report, at 3, available at: <https://cao-94612.s3.amazonaws.com/documents/Police-Commission-Annual-Report-2020.pdf> (listing ad hoc committees created to address specific needs).

**Peer Group Selection**

This benchmarking analysis is based on a review of the duties and responsibilities of a group of municipal and county-wide civilian oversight entities that focus on conducting independent investigations.

As outlined below in Table 1, there are few civilian oversight entities with an investigative focus that oversee county-wide law enforcement entities of similar in size to SDDS.

**Civilian Oversight for County-wide Law Enforcement: 50 Largest U.S. Counties**

Table 1

Sheriff's Offices/Departments				
Review	Advisory	Supervisory	Investigative	Appeals
King (WA): Office of Law Enforcement Oversight	Los Angeles (CA): Civilian Oversight Commission		Los Angeles (CA): Office of Inspector General	Travis (TX): Civil Service Commission
Orange (CA): Office of Independent Review	King (WA): Community Advisory Commission for Law Enforcement Oversight		San Diego (CA): Citizen's Law Enforcement Review Board	
Nassau (NY): Board of Visitors	Sacramento (CA): Sheriff's Outreach Community Advisory Board			
Sacramento (CA): Inspector General	Sacramento (CA): Community Review Commission			
Miami-Dade (FL) Independent Review Panel				
Clark (NV): Civilian Review Board	Salt Lake (UT): Citizen Advisory Board	Honolulu (HI): Police Commission		
Fairfax (VA): Independent Police Auditor	Montgomery (MD): Policing Advisory Commission	Salt Lake (UT): Board of Directors		
Fairfax (VA): Civilian Review Panel		St. Louis (MO): Board of Police Commissioners		
Santa Clara (CA) Office of Corrections and Law Enforcement Monitoring				
County-wide Police Departments				

There are more investigative entities operating in the context of municipal law enforcement oversight. A list of the entities used for comparison is provided in Appendix A.

As shown in Table 2, a group of peer oversight entities was identified based on the size of the law enforcement entities being overseen. Although the Los Angeles County Office of Inspector General (LAOIG) has some investigative powers, the LAOIG oversees a law enforcement entity that is more than 4 times the size of that overseen by CLERB. In addition, the LAOIG's mandate goes beyond investigative oversight to encompass monitoring and auditing. Thus, the LAOIG is not necessarily a comparable peer institution. Looking at the civilian entities overseeing municipal police departments, there are several that have responsibility for entities that are more comparable in size to SDDS. As shown in Table 2, there are five entities that appear comparable.

**Table 2: Benchmarking Analysis**  
Peer Group Selection Based on Size of Law Enforcement Agency

City/County	U.S. Census 2020 Pop. Est. (City/County)	Law Enforcement Agency Size	Civilian Oversight Entity Name



## CLERB STRENGTHS & OPPORTUNITIES ASSESSMENT

		(Budgeted 2021 FTE's)	
New York	8,804,190	50,278.0	Citizen Complaint Review Board
Los Angeles (County)	10,014,009	18,300.0	Office of the Inspector General
Chicago	2,746,388	14,095.0	Civilian Office of Police Accountability
Washington	689,545	4,746.0	Office of Police Complaints
San Diego (County)	3,298,634	4,385.0	Citizen's Law Enforcement Review Board
San Francisco	873,965	3,048.5	Department of Police Accountability
Atlanta	498,715	2,594.0	Civilian Review Board
Cleveland	372,624	2,277.0	Office of Professional Standards
Seattle	737,015	1,993.1	Office of Police Accountability
Nashville	689,447	1,965.7	Community Oversight Board
Miami	442,241	1,672.0	Civilian Investigative Panel
Cincinnati	309,317	1,243.0	Citizen Complaint Authority
Oakland	440,646	1,218.5	Community Police Review Agency
Long Beach	466,742	1,189.4	Citizen Police Complaint Commission
Pittsburgh	302,971	943.0	Citizen Police Review Board
Minneapolis	429,954	866.0	Office of Police Conduct Review

### *Comparative Headcount Analysis*

As outlined below in Table 3, at a total of 8 staff members, CLERB's manpower is low relative to its peers. The average number of FTE's among the peer investigative agencies is over 26.

**Table 3: Headcount of Peer Investigative Agencies (FTE's)**  
Total Entity FTE's Budgeted in 2021 and Entity FTE's relative to Law Enforcement Agency Size

City	Rank	Entity	Total 2020 FTE's	L.E. FTE's per Entity FTE
San Francisco	1	Department of Police Accountability	56.0	54.4
Seattle	2	Office of Police Accountability	27.0	73.8
Washington	3	Office of Police Complaints	24.8	191.4
Cleveland	4	Office of Professional Standards	14.0	162.6
Atlanta	5	Civilian Review Board	9.0	288.2
San Diego County	6	CLERB	8.0	548.1
<b>Peer Group Average</b>			<b>26.2</b>	<b>154.1</b>
<b>Peer Group Average w/o San Fran</b>			<b>18.7</b>	<b>179.0</b>

The San Francisco Department of Police Accountability ("San Francisco DPA") appears somewhat of an outlier in terms of its very robust staffing and as will be discussed below, significantly higher budgetary funding than the peer group. Thus, taking San Francisco DPA out of the peer group, CLERB's staffing of 8 FTE's still falls below the peer average of 18.7. CLERB also appears understaffed relative to the peer group when looking at the size of the oversight entity staff relative to the number of employees of the law enforcement agency being overseen. For CLERB there are approximately 548 Department full time employees (FTE's) per CLERB FTE

compared to approximately 154 department employees per oversight entity employee among the peer entities.

## **2. Professionalism & Culture**

Professionalism and culture are also important considerations in civilian oversight, particularly for investigative agencies. It is essential that agency staff have the requisite skills and experience to perform complex investigative work. Because this assessment could not include an evaluation of the agency's work product, there is no assessment herein of the professionalism with which the investigative staff is operating.

However, it is important to touch on training in support of professionalism. Training is an important consideration for investigative agencies. Currently, CLERB is requiring new investigative staff members to participate in onboarding training to provide orientation to the County and an understanding of CLERB's mission and operations. This is excellent. It is also important that CLERB provide resources for ongoing training as well. The CLERB Board and Staff members should receive ongoing training as best practices in civilian oversight evolve over time. In addition, training is necessary to ensure that the Board and staff remain knowledgeable about changes in Department policy and best practices in policing.

There are three types of training that oversight entities typically pursue: onboarding training, ad hoc or as needed training, and regular training. Oversight boards typically require new members to undergo some form of onboarding training to introduce them to the board's role and responsibilities. Many jurisdictions define such a training requirement in the establishing ordinance for the board. Onboarding training is also very beneficial for new agency staff members as well. For example, when Chicago launched the Civilian Office of Police Accountability, all investigative staff members were required to participate in a 6-week training program. Oversight entities also typically conduct training on an ad hoc basis on important topics as they arise, such as new policies or programs or changes in law. Lastly, oversight entities also provide regularly scheduled training on topics of particular relevance or importance. For example, much like many law enforcement agencies require annual training on important skills such as use of force, civilian oversight practitioners also benefit from regular training on key skills and topics. With additional funding, CLERB could employ administrative personnel to plan and design training for the Board and agency staff so this responsibility does not rest solely with the Executive Director.

Regarding organizational culture, in order to engender the trust of both the civilian community and the law enforcement community, it is important that the organizational culture reflect the neutrality that is essential to fair and judicious oversight. The CLERB might consider implementing policies regarding social media use for Board members and staff, if not already in place.

It is also important that the agency's organizational culture value independence, timeliness and quality. One way to reinforce these core values is to incorporate them into the agency's performance evaluation system. Currently, CLERB's investigative staff members participate in a performance review process that is generic to all County employees. It is possible that tailoring the performance review process to CLERB's specific organizational needs and goals could enhance the performance of individual staff members. For example, individual investigators

should have personal objectives related to investigative timeliness and quality and their job performance should be evaluated relative to those specific goals.

### **3. In-house Capabilities and Expertise**

For an investigative agency overseeing a law enforcement entity of this size and complexity, in addition to sufficient investigative staffing, there are certain professional capabilities that the agency can benefit from having in-house. In particular, there are three areas of professional expertise that could greatly enhance the quality of the oversight CLERB provides: data analysis, policy analysis, and legal analysis.

Data analytics is becoming more and more important in the context of both law enforcement and law enforcement oversight. In particular, investigative agencies can benefit from data analysis in support of individual cases, as well as to identify trends in the performance of the law enforcement agency that could point to gaps in policy and/or training.

CLERB could also benefit from hiring a policy analyst whose sole responsibility would be to stay abreast of developments in law enforcement policies and who could also support the CLERB in defining its own operational policies based on research and best practices.

Because the legal framework in which CLERB operates is complex, CLERB could also benefit from having a staff lawyer to provide legal advice and counsel throughout the investigative process and to help develop and pursue CLERB's legislative agenda to address the legal obstacles impairing CLERB's ability to deliver on its mission. Moreover, to the extent that CLERB does pursue non-public hearings as part of its investigative process, in-house lawyers could take responsibility for administering the presentation of cases at investigative hearings.

Lastly, if not already in place, with additional investigative staffing, CLERB could consider designating one or more investigator positions to focus specifically on investigations related to detention facilities and staff those positions with personnel with professionals who bring jail oversight expertise.

### **4. External Capabilities and Expertise**

In addition to enhancing CLERB's in-house expertise and capabilities, CLERB should also have sufficient resources to afford the advice and counsel of outside subject matter experts to enhance the quality and timeliness of CLERB investigations and policy recommendations. In addition to outside legal expertise, CLERB is also likely to benefit from engaging subject matter experts on complex law enforcement and civilian oversight topics such as use of force policy and data analysis and best practices related to law enforcement training. It may also be helpful for CLERB to have the resources to bring in external civilian oversight experts to support CLERB's training, data and case management systems, and auditing capabilities.

## B. TECHNICAL

There are also technical resources that, when made available, can enhance the quality and timeliness of misconduct investigations. As discussed above, case management technology is absolutely essential to help drive quality and timeliness in the investigative process. In addition, also discussed above, is the importance of having the technical capability to directly access Department reports.

Another important technical resource for investigative agencies is the ability to obtain, store and analyze video evidence. If not yet available, CLERB could explore identifying such external resources that can be tapped into as needed.

## C. FINANCIAL

### 1. Budget benchmarking analysis

A comparison to the peer investigative agencies indicates that CLERB appears to be significantly underfunded.

**Table 4: Investigative Agency Budget Comparison**

City	Rank	Entity	Total 2021 Budget	Personnel Costs
San Francisco	1	Department of Police Accountability	\$ 10,415,143	\$ 8,811,854
Seattle	2	Office of Police Accountability	\$ 4,824,034	NA
Washington	3	Office of Police Complaints	\$ 2,612,656	\$ 2,519,000
Cleveland	4	Office of Professional Standards	\$ 1,502,165	\$ 1,313,579
<b>San Diego County</b>	<b>5</b>	<b>CLERB</b>	<b>\$ 1,501,491</b>	<b>\$ 1,237,779</b>
Atlanta	6	Civilian Review Board	\$ 1,367,940	\$ 924,584
		<b>Peer Group Average</b>	<b>\$ 4,144,388</b>	<b>\$ 3,392,254</b>
		<b>Peer Group Average without San Francisco</b>	<b>\$ 2,576,699</b>	<b>\$ 1,585,721</b>

CLERB's total 2021 budget, at approximately \$1.5 Million, is just over one-third of the average budget of its peer group. Recognizing that the San Francisco DPA is significantly more endowed relative to the rest of the peer group, it may be fairer to compare CLERB's budget to the rest of the peer group. Yet, that comparison still shows that the CLERB is significantly underfunded with a budget just over one-half of the average of the peer group exclusive of the San Francisco DPA.

Another common method of budget comparison is to measure the oversight entity's budget relative to that of the law enforcement agency being overseen. Evaluating CLERB's funding based on this measure also demonstrates that CLERB appears underfunded. CLERB's budget represents approximately just over one-tenth of one percent (0.15%) of the SDSD annual budget expenditures. This is low compared to the peer entities. The common benchmark for investigative

oversight entity funding as a percentage of the law enforcement budget is typically around 1% (in the context of municipal policing).<sup>70</sup>

**Table 4: Budget Comparison Relative to Law Enforcement Agency Budget (2021)**

City	Rank	Entity	Entity Budget as % of L.E. Budget
San Francisco	1	Department of Police Accountability	1.56%
Seattle	2	Office of Police Accountability	1.35%
Cleveland	3	Office of Professional Standards	0.69%
Atlanta	4	Civilian Review Board	0.54%
Washington	5	Office of Police Complaints	0.48%
<b>San Diego County</b>	<b>6</b>	<b>CLERB</b>	<b>0.15%</b>
		<b>Peer Group Average</b>	<b><u>0.92%</u></b>

If CLERB were funded at the peer group average rate of 92% of SDS’s Budget, the CLERB Budget would total approximately \$9Million.

## 2. Important Non-Personnel Expenses

Additional financial resources will enhance CLERB’s ability to fulfill its mission to deliver high quality, independent investigations. In addition to funding increases in investigative and support personnel, additional funding can be used to support more regular training and data management. Additional resources could also directly improve the quality of the investigative process by affording the use of subject matter experts and important investigative activities such as vehicles used to respond to scenes, and travel to meet complainants and witnesses.

Key non-personnel budget line items that might be considered for additional funding include:

- Training
- Information Technology
- Equipment (vehicles, recording equipment, etc.)
- External subject matter expert consultation
- Outside Legal fees

## 3. Board Compensation

Like many, if not most, civilian oversight boards, by ordinance, CLERB Board members serve on a volunteer basis. Board service is a very significant time commitment. The unpaid time commitment could make board service impossible for some community members who might otherwise be qualified and interested in serving. If not already doing so, the County might consider

<sup>70</sup> See, e.g., Chicago City Code § 2-78-105 (setting a budget floor for the Civilian Office of Police Accountability at 1.0% of the annual appropriation for all non-grant funds for the Chicago Police Department).

providing reimbursement for reasonable expenses associated with participation (e.g., travel expenses, meals, and childcare).<sup>71</sup>

#### IV. CASE & DATA MANAGEMENT

The investigative team should be applauded for significantly improving the timeliness of investigations to avoid having to dismiss cases because investigations could not be concluded within the one-year time limit. Also, the agency produces monthly workload reports to provide transparency around its workflow. This is helpful. There may be additional resources that the agency could use to support its case management efforts. Currently, the staff has “limited use of information technology resources (e.g., online data management platforms, case management tools, dictation software).”<sup>72</sup>

Each member of the investigative team can benefit from the use of technology in managing caseloads and case processing. CLERB’s data management system, AIM, may provide some reporting tools and dashboards that can be used to help track the investigative process and generate flags when investigations are getting off track. AIM may provide tools that individual investigators can use to help them more efficiently manage their caseloads and achieve timeliness goals. In addition, AIM is likely to have tools that the Executive Director and the Supervising Investigator can use to manage the agency’s workflow. If AIM’s case management capabilities are insufficient, the agency might consider other resources for case management.

CLERB presently has data on its cases going back to 1990. This data could hold a lot of value. CLERB has the potential to use the data it collects on complaints and incidents to identify patterns and practices of individual officers, groups, or the Departments as whole. CLERB could consider evaluating the content, use and structure of its database to assess the potential for improvements and the types of analyses that can be generated. Here are some examples of the types of data that could be collected and analyzed (if not already being collected):

- Subject age, race, & gender
- Officer age, race & gender
- Officer assignment
- Officer tenure
- Officer education
- # of subjects involved
- # of officers involved
- Subject possessed weapon
- Type of weapon possessed
- Incident Location
- # of shots fired by each involved officer
- Foot chase involved
- Motor vehicle chase involved
- Subject mental health status

<sup>71</sup> For example, the Atlanta Citizen’s Review Board provides “reimbursement for actual and necessary expenses incurred in the performance of their duties.” Atlanta City Code § 2-2209(a).

<sup>72</sup> CLERB Workload Analysis, at 1 (Appendix E).

- Origin of interaction (call for service vs. on-view)
- Time of Day
- Nature/level of threat/resistance

## V. TRANSPARENCY AND COMMUNITY ENGAGEMENT

### A. COMMUNITY ENGAGEMENT

The most impactful civilian oversight boards have a deep understanding of community interests and needs, with special attention paid to the communities that have historically had troubled relationships with the Departments. Gaining this insight does not happen in a vacuum. The strongest boards employ a robust, systematic approach to foster an ongoing dialogue with the community they serve. It is important that the exchange of information flows in both directions. It is part of the board's mission to collect feedback on the relevant issues, while it is also part of the mission to convey information of interest to the community and to educate the community about public safety issues and operations that affect them.

Community engagement is one of the key performance metrics by which CLERB's contributions to the County are measured during the budget cycle each year. In recent years, CLERB has expressed its strong commitment to community engagement. This is helpful. CLERB could consider developing a strategic plan for community outreach that fosters positive, productive and truly two-way interaction with various constituencies within San Diego County. Community engagement is never one-size fits all. What works for one community may not fulfill the needs of another. The goal is to create "infrastructure" – meaning ongoing, regular procedures or mechanisms – through which to gather community feedback on the Departments' and CLERB's performance, as well as to share information about the Departments and CLERB.

The Board might also consider creating programming that can be executed on a regular basis to facilitate community engagement, e.g., an annual public forum, or quarterly community training where Board members or the Executive Director provide educational programming on topics of interest to the community. Also, special efforts may be required to gain input from under-represented communities and key stakeholders.

The Board does a good job of summarizing community comments from the public portion of its meetings. The Executive Director should consider whether there are any specific action steps that should be undertaken based on the comments. For example, a public attendee at the August 10, 2021 meeting recommended that the board pursue jurisdiction over medical personnel in the detention facilities. The Board might consider adding that issue to its legislative agenda.

### B. TRANSPARENCY AND PUBLIC REPORTING

The benefits of civilian oversight, particularly the investigative model of civilian oversight, are difficult to achieve without the public having some visibility into how well the system is working. CLERB does successfully produce some information for public consumption. The Board publishes its case-specific findings with its monthly meeting reports which include a high-level factual summary, the Board's finding and rationale for the finding. In addition, the Board's Annual

reports are produced consistently which provide some analysis of the data collected related to complaints and incidents within the Board’s jurisdiction. The Board’s meeting minutes and policy recommendations are made public as well. This is helpful and important, to be sure.

However, CLERB could provide more valuable transparency about its own work and about the performance of the Departments by maximizing the information it makes public within the current legal bounds, and also by pushing for changes in law that will permit greater transparency.

Even without changing the law, there may be ways for CLERB to provide more public information. First, CLERB could explore the possibility of disclosing investigative reports and/or materials related to complaints or incidents that fall within the permissible public disclosures outlined in California Senate Bill 16 which allows for the public dissemination of records related to:

- 1) Firearms discharge incidents;
- 2) Use of force incidents resulted in death, or in great bodily injury;
- 3) Incidents resulting in a sustained finding of sexual assault;
- 4) Sustained findings involving complaints of unreasonable or excessive force;
- 5) Sustained findings that a peace officer failed to intervene against another officer using clearly unreasonable or excessive force;
- 6) Sustained findings of conduct involving prejudice or discrimination based on a protected classification;
- 7) Sustained findings of unlawful arrest or unlawful search; and
- 8) incidents resulting in a sustained finding of dishonesty in reporting.<sup>73</sup>

For example, the Sacramento County Office of Inspector General provides more detailed public reporting on critical incidents.<sup>74</sup> Note also that many reports and documents related to the complaints and incidents that fall within CLERB’s jurisdiction, although relevant to a disciplinary matter, are NOT “personnel records” as defined by Section 832.7 and may, therefore, be subject to public disclosure.<sup>75</sup> CLERB should explore what information and records it maintains can be shared publicly within the law. For example, the Oakland Community Police Review Agency has an online portal providing access to records.<sup>76</sup>

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<sup>73</sup> California Penal Code § 832.7(b)(1)(A-C).

<sup>74</sup> *See, e.g.* Sacramento County Office of Inspector General, Officer-involved Shooting Review Justin Prescott, Dec. 29, 2016 (providing a discussion of the methodology of investigation, a summary of the incident, a description of the physical evidence, and the lessons learned and recommendations arising from the incident) (Appendix I).

<sup>75</sup> *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal. 4th 59, 71 (2014) (noting that many records routinely maintained by law enforcement agencies are not personnel records and adding that although many incidents result in an appraisal or discipline of an officer, only the records generated in connection with that appraisal or discipline would come within the statutory definition of personnel records).

<sup>76</sup> Oakland Community Police Review Agency SB1421 Records Request Portal, available at: <https://www.oaklandca.gov/news/2019/sb-1421>.



Second, CLERB could start requesting from the Departments and then publicizing aggregated data on the ultimate outcomes of cases that fall within its jurisdiction. The SDSO should not have any objection to publishing aggregated data related to police discipline as they already publish their own data in the Annual Internal Affairs Reports made available on the SDSO website. The goal is to provide the public with at least some understanding of the extent to which CLERB's disciplinary findings and recommendations influence the disciplinary action taken by the Departments. This is an important aspect of civilian oversight. It is broadly recognized that most oversight entities lack the power to enact discipline, they can only influence the process by making findings and recommendations. Thus, it is important to have some measure of the extent of this influence so the community can judge not only the quality of the work of the oversight entity, but also, the receptiveness of the law enforcement agency to feedback.

## VI. OTHER CONSIDERATIONS

Efforts to enhance civilian oversight in San Diego County are being pursued in the context of a proliferation of civilian oversight nationwide, at both the municipal and county levels. Like other communities, San Diego County seeks to optimize oversight as an important mechanism for bringing community voice to policing thereby enhancing trust and legitimacy which are both essential to public safety. The pace at which new oversight entities are being created and established entities are being reformed started trending upward sometime in or around 2016 and has accelerated dramatically since the 2020 murder of George Floyd.

There are some observable trends in the current evolution of civilian oversight that San Diego County may consider. Many jurisdictions, particularly the larger, more urban communities, are creating multi-tiered oversight systems that combine two or more entities each performing a different oversight function. One emerging model is to combine an investigative agency with an audit agency and an oversight board. This model has been introduced in Chicago, Oakland, New York and Seattle. When adopting this approach, the Seattle city council explicitly acknowledged that this combination of oversight can address many systemic weaknesses in oversight with which other communities have struggled.<sup>77</sup> In particular, employing an auditing agency or function, such as an Inspector General, to review a law enforcement agency's performance at the programmatic level, can effectively complement the oversight provided by an investigative agency which addresses accountability at the individual case level. The benefit of incorporating an auditing function into an oversight structure is that it can foster systemic change by identifying and addressing unfavorable patterns and trends and problematic gaps in policy or procedure. For example, the Los Angeles Inspector General's audit and program review powers enabled that entity to conduct a review and analysis of the misconduct investigations and disciplinary process of the Los Angeles County Sheriff's Department.<sup>78</sup> The Los Angeles OIG's report identified structural and cultural issues in the Sheriff's department disciplinary system and offered recommendations to address them.<sup>79</sup> This kind of audit and program review can contribute

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<sup>77</sup> City of Seattle, Ordinance 125315, Council Bill 118969, enacted Jun. 1, 2017.

<sup>78</sup> Los Angeles County Sheriff's Department: Review and Analysis of Misconduct Investigations and Disciplinary Process, Office of Inspector General County of Los Angeles, February 2021, available at: [https://oig.lacounty.gov/Portals/OIG/Reports/IIPublicReport\\_Body2.pdf?ver=qMyIxZkcy\\_EwrHn0JWrOw%3d%3d](https://oig.lacounty.gov/Portals/OIG/Reports/IIPublicReport_Body2.pdf?ver=qMyIxZkcy_EwrHn0JWrOw%3d%3d).

<sup>79</sup> *Id.*

significantly to enhancing accountability and result in reforms that increase public confidence in the Department's willingness to hold its own accountable.

Instilling oversight entities with the power to monitor law enforcement operations is also becoming increasingly prevalent. This is a powerful form of oversight because it provides an opportunity to observe and influence law enforcement activity in real time. Santa Clara County recently adopted this approach for oversight when it created the Office of Correction and Law Enforcement Monitoring ("OCLEM") in 2018.<sup>80</sup> The Santa Clara OCLEM has broad authority to independently monitor the operations of the Sheriff's office, the Department of Correction, and other county agencies or departments related to law enforcement and jail operations.<sup>81</sup> As the Santa Clara Board of Supervisors acknowledged in the establishing ordinance, such oversight was intended to help foster transparency and accountability while also identifying opportunities for continuous improvement.<sup>82</sup>

## CONCLUSION

As one of the longest running civilian oversight entities in the country, CLERB clearly has an important legacy and an established position in the accountability infrastructure for SDSD and SDCPD. The recent enhancements made to CLERB's subject matter jurisdiction were an important step forward. Similarly, the recent increases in CLERB's investigative staffing were important and necessary. There appears to be momentum behind community efforts to maximize the effectiveness and transparency of CLERB's oversight of the Departments. That momentum can be harnessed to effect additional changes that can enhance CLERB's ability to fulfill its mission to provide truly independent investigations of the complaints and incidents involving SDSD and SDCPD personnel.

An abbreviated list of the recommendations provided herein is included as Appendix B.

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<sup>80</sup> Santa Clara Code of Ordinances § A20.61, et. seq. (Apr. 3, 2018).

<sup>81</sup> Santa Clara Code of Ordinances § A20.63.

<sup>82</sup> Santa Clara Code of Ordinances § A20.61.

# **APPENDIX A**

## Appendix A: Peer Group Analysis

City	State	Population (U.S. Census Estimate 2020)	Law Enforcement Agency Size FTE's 2021	Agency Name	2021 Oversight Entity Budget	2021 Oversight Entity Personnel Budget	2021 Oversight Entity Budget FTE's	Law Enforcement Agency Budget 2021
New York	NY	8,804,190	50,278.0	Citizen Complaint Review Board	\$ 19,470,000	\$ 14,895,000	212.0	\$ 5,224,283,000
Chicago	IL	2,746,388	14,095.0	Civilian Office of Police Accountability	\$ 13,314,826	\$ 11,176,496	140.0	\$ 1,710,207,801
Washington	DC	689,545	4,746.0	Office of Police Complaints	\$ 2,612,656	\$ 2,519,000	24.8	\$ 545,686,633
<b>San Diego</b>	<b>CA</b>	<b>3,298,634</b>	<b>4,385.0</b>	<b>Citizen's Law Enforcement Review Board</b>	<b>\$ 1,501,491</b>	<b>\$ 1,237,779</b>	<b>8.0</b>	<b>\$ 978,303,451</b>
San Francisco	CA	873,965	3,048.5	Department of Police Accountability	\$ 10,415,143	\$ 8,811,854	56.0	\$ 667,116,887
Atlanta	GA	498,715	2,594.0	Civilian Review Board	\$ 1,367,940	\$ 924,584	9.0	\$ 253,507,186
Cleveland	OH	372,624	2,277.0	Office of Professional Standards	\$ 1,502,165	\$ 1,313,579	14.0	\$ 218,203,160
Seattle	WA	737,015	1,993.1	Office of Police Accountability	\$ 4,824,034	NA	27.0	\$ 358,164,776
Nashville	TN	689,447	1,965.7	Community Oversight Board	\$ 1,513,000	\$ 1,030,400	10.0	\$ 225,115,700
Miami	FL	442,241	1,672.0	Civilian Investigative Panel	\$ 1,174,000	NA	5.0	\$ 273,433,000
Cincinnati	OH	309,317	1,243.0	Citizen Complaint Authority	\$ 700,700	\$ 672,060	6.0	\$ 152,852,790
Oakland	CA	440,646	1,218.5	Community Police Review Agency	\$ 3,004,089	NA	14.0	\$ 316,570,464
Long Beach	CA	466,742	1,189.4	Citizen Police Complaint Commission	\$ 516,633	NA	2.5	\$ 272,914,843
Pittsburgh	PA	302,971	943.0	Citizen Police Review Board	\$ 645,222	\$ 487,642	6.0	\$ 106,130,127
Minneapolis	MN	429,954	866.0	Office of Police Conduct Review	\$ 1,309,000	NA	10.5	\$ 164,102,000

# **APPENDIX B**

# CLERB STRENGTHS & OPPORTUNITIES ASSESSMENT

## Appendix B: List of Improvement Opportunities

Opportunity		Responsibility
<b>Jurisdictional Scope &amp; Powers</b>		
<b>Subject Matter Jurisdiction</b>		
√	Consider adding “domestic violence” to list of complaint-based investigative authority	BOARD + County BOS
√	Consider authorizing CLERB to conduct pattern & practice investigations	BOARD + County BOS
<b>Personal Jurisdiction</b>		
√	Consider expanding jurisdiction to cover all Department employees	BOARD + County BOS
<b>Investigative Powers</b>		
√	Consider adding ordinance provision that affords CLERB direct access to Department reports and information systems	BOARD + County BOS
√	Consider adding ordinance provision that enhances ability to enforce duty to cooperate to the extent permissible by law	BOARD + County BOS
<b>Disciplinary Recommendations</b>		
√	Consider adding ordinance provision requiring Departments to provide CLERB with information to support specific disciplinary recommendations & public reporting of aggregated disciplinary information	BOARD + County BOS
<b>Policy Recommendations</b>		
√	Consider adding ordinance provision formalizing that Department response to CLERB policy recommendations is required	BOARD + County BOS
<b>Policies &amp; Procedures</b>		
<b>Investigative Process – Complaint Intake</b>		
√	Consider eliminating ordinance provision that requires complaints to be signed under penalty of perjury	BOARD + County BOS
√	Accept electronic signatures unless prohibited by law	BOARD + Staff
√	Develop policies & procedures governing steps required to secure a signed complaint before a complaint can be dismissed for lack of signature	Staff
√	Consider eliminating requirement that complainants agree to forgo issuing subpoenas to CLERB	BOARD + Staff
<b>Investigative Process – Preliminary Investigations</b>		
√	Continue pursuit of immediate notifications of critical incidents by Departments	BOARD + Staff
√	Respond to scenes to conduct preliminary investigative steps, more independent fact-finding (canvassing for witnesses & video) as soon as practicable	Staff
√	Pursue access to and participation in the Departments’ Critical Incident Review Board proceedings/reports	Staff
√	Conduct independent investigative steps as soon as practicable after incident occurs (rather than awaiting documents from the Departments)	Staff
<b>Investigative Process – Information Access</b>		
√	Pursue direct (front-end and back-end) access to Department reporting/information systems	BOARD + Staff
<b>Investigative Process – Investigative Planning and Management</b>		
√	Develop investigative plans	Staff

## CLERB STRENGTHS & OPPORTUNITIES ASSESSMENT

	√ Consistently document investigative progress – including delays	Staff
	√ Develop technology-based case management tools to enhance quality and timeliness of investigations	Staff
	√ Develop more robust policies and procedures to enhance timeliness and quality → investigator manual	Staff
<b>Investigation Process – Witnesses, Subpoena Power &amp; the Duty to Cooperate</b>		
	√ Conduct and record witness interviews in person to the extent possible	Staff
	√ Enforce subpoena power	BOARD + Staff
	√ Enforce duty to cooperate	BOARD + Staff
	√ Consider conducting non-public investigative hearings and public hearings at officers’ request where doing so would improve fact-finding	BOARD + Staff
<b>Internal Investigative Case Review</b>		
	√ If not already doing so, require full file review by at least 2 staff members before closing a case	Staff
	√ For serious cases, require legal input throughout investigative process and legal review prior to closing	Staff
<b>Investigative Outcomes</b>		
	√ Pursue aggregated disciplinary data and other information from the Departments to inform more specific disciplinary recommendations	BOARD + Staff
	√ Pursue and publish data from the Departments on the ultimate outcome of matters within CLERB’s jurisdiction	BOARD + Staff
<b>Oversight of Detention Facilities</b>		
	√ Pursue visits in response to complaints and critical incidents	BOARD + Staff
	√ Consider pursuing unannounced visits	BOARD + Staff
<b>Policy Development</b>		
	√ Engage community in the development of recommendations regarding public-facing policies	BOARD
	√ Develop recommendations to enhance the Departments’ transparency	BOARD + Staff
<b>Management &amp; Administration</b>		
	√ Consider tailoring performance evaluation system to address organizational needs – reinforcing key values of integrity, timeliness, and neutrality	BOARD + Staff
	√ Increase use of data management/technology to drive timeliness and quality	Staff
<b>Board Procedures &amp; Decision-making</b>		
	√ Share responses to board member questions about individual cases with all board members	Staff
	√ Provide a formal opportunity for board members to review key evidence	Staff
	√ Consider requiring board members to attest to having reviewed the summary report and key evidence prior to decision-making	BOARD
	√ Develop a protocol for appointing an “Acting Executive Director” in the event of vacancies in that position	BOARD
	√ Consider allowing for community input into the Executive Director performance objectives	BOARD
	√ Consider appointing Executive Director to a term of years with removal only for cause	BOARD
<b>Board Selection Process</b>		
	√ Identify ways to streamline the process to minimize time of vacancies	BOARD + County CAO

## CLERB STRENGTHS & OPPORTUNITIES ASSESSMENT

✓	Assess whether geographic representation is inhibiting diversity of board composition	BOARD + County CAO
✓	Consider expanding the board to add members with helpful subject matter expertise + personal experience	BOARD + County BOS
✓	Enhance transparency around the selection process and criteria for selection	BOARD + County CAO
✓	Allow Board input to the selection criteria for each vacancy to enhance diversity of representation and address needed subject matter expertise	BOARD + County CAO
✓	Consider creating standing committees to take on regular tasks, and ad hoc committees to take on larger non-recurrent projects	BOARD
<b>Resources</b>		
<b>Human Resources</b>		
✓	Increase investigative staffing to enhance ability to conduct independent investigative tasks and improve investigative timeliness and quality	BOARD + Staff + County BO
✓	Pursue in-house capabilities: data analysis, policy analysis, & legal affairs	BOARD + Staff + County BOS
✓	Review quality and consistency of onboarding training – leverage available external resources (e.g. NACOLE)	BOARD + Staff
✓	Provide consistent, regular training for Board and Staff to stay abreast of Department policies and operations and best practices in policing and civilian oversight	BOARD + Staff
✓	Pursue external subject matter expertise as needed	Staff
✓	Pursue independent selection of outside counsel – periodically review	Staff + County Counsel
<b>Technical Resources</b>		
✓	Pursue database management technology to track timeliness of investigative process	Staff
✓	Pursue external video evidence analysis capabilities	Staff
<b>Financial Resources</b>		
✓	Increase funding to support optimal investigative staffing	BOARD + County BOS
✓	Increase funding to afford in-house capabilities (policy, data, legal)	BOARD + County BOS
✓	Increase funding for training (Board + Staff)	BOARD + County BOS
✓	Increase funding for investigative equipment (vehicles, recording devices)	BOARD + County BOS
✓	Consider reimbursing Board members for reasonable expenses	BOARD + County BOS
<b>Case &amp; Data Management</b>		
✓	Leverage or acquire case management tools to enhance timeliness & quality of investigations	Staff
✓	Incorporate timeliness drivers in case management policies and procedures	Staff
✓	Leverage CLERB data to identify trends in Department performance	Staff
✓	Leverage data to identify patterns and practices of misconduct	Staff
<b>Community Engagement &amp; Transparency</b>		
<b>Public Reporting &amp; Meetings</b>		
✓	Explore feasibility of publishing investigative reports and information to the extent permissible by law	BOARD + Staff
✓	Unless legally prohibited, disclose all MOU's with Departments and unions	BOARD + Staff



## CLERB STRENGTHS & OPPORTUNITIES ASSESSMENT

	√ Pursue aggregated data from the Departments on case outcomes that can be used to support public reporting on matters within CLERB's jurisdiction	BOARD + Staff
	√ Conduct periodic audits to assess whether the SDSD is following its own policy regarding the release of information on critical incidents that is required by law	Staff
	√ Develop a data dashboard for the website on key metrics and case information (status and outcome)	Staff
	√ Ensure public comments received at meetings that require a response from CLERB or the Departments are directed to the appropriate resource	BOARD + Staff
<b>Community Engagement</b>		
	√ Develop a strategic plan for community outreach supporting 2-way communication: seek feedback + provide education	BOARD + Staff

# **APPENDIX C**

### 6.138 Publicly Released Incident Briefs

#### **PURPOSE**

The San Diego County Sheriff's Departments process for releasing video and other case related information during certain incidents is intended to bring transparency to the communities we serve. It is not intended to circumvent the process for handling requests authorized under Penal Code 832.7(b) or Government Code 6254. Instead, these items, released at the direction of the Sheriff or designee, are intended to provide some context and information to the viewer, of what occurred during an incident such as an officer-involved shooting or a use of force resulting in death. It is important to remember that the brief does not necessarily represent all sides of an event but is part of a complex and dynamic event that must be properly investigated and thoroughly analyzed before rendering judgment.

Incidents which may result in a Publicly Released Incident Brief may include:

- Use of lethal force by deputies
- Deputy-involved shootings. (Not including unintended discharges without injury, dispatching of animals or shooting of aggressive animals)
- Use of force by deputies that results in death, a high probability of death, or serious injury
- Any other incident as directed by the Sheriff, or designee

By nature, these types of incidents invite public scrutiny. In order to help the public evaluate the actions of Department members involved in such incidents, it is imperative to put the actions of staff into context to aid viewers in making informed conclusions. This process will facilitate lawful release to the public, video, audio, and other pertinent information related to an incident, in a timely and efficient manner.

The Department may produce Publicly Released Incident Briefs following an incident. The Department must balance the desire to be transparent with compelling reasons to withhold some or all incident materials. As a result, the Department may delay or withhold releasing some or all incident-related information for any of the following reasons:

- Privacy interest of witnesses, victims, suspects, or deputies involved in the incident
- Rights of the accused to have a fair trial
- To protect the integrity of the investigation
- Prosecutorial concerns from the District Attorney's Office, City, or Federal Prosecutors
- Laws prohibiting release of information based on the crime type or age of those involved
- Other considerations which form a basis for a compelling reason not to provide a Publicly Released Incident Brief

#### **Delayed or Withheld Release:**

Should the Department delay or withhold some information related to a Publicly Released Incident Brief, the Department may make a written statement explaining the rationale and post it publicly.

#### **Notifications:**

Absent exigent circumstances, reasonable attempts shall be made to notify the following individuals or entities prior to the release of the video publicly:

- Deputies depicted in the video and/or significantly involved in the use of force
- If the subject is deceased or incapacitated, the next of kin should be notified

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- If the subject is a juvenile, the subject's parents or legal guardian should be notified
- Impacted law enforcement command(s)
- District Attorney's Office, City Attorney's Office, and/or United States Attorney's Office as appropriate
- The Deputy Sheriff's Association
- Other individuals or entities connected to the incident as deemed appropriate by the Sheriff or a designee.

### **Media Relations Unit / Redaction:**

The Sheriff's Media Relations Unit will coordinate, create, and distribute the Publicly Released Incident Brief or create the statement explaining the compelling reason(s) not to release the materials. The Sheriff or a designee will approve the content prior to the release.

Redaction of materials (blurring specific video, bleeping, or silencing audio, etc.) will be conducted in accordance with current applicable laws. (03-24-21)

# **APPENDIX D**

**SAN DIEGO COUNTY  
CITIZENS' LAW ENFORCEMENT REVIEW BOARD  
HISTORICAL PERSPECTIVE  
March 1989 – June 2017**

**March 1989:**

Grand Jury Report #4 "San Diego County Detention Facilities Investigation" finds

- Inadequate leadership and accountability in Sheriff's Department;
- Inadequate supervision of staff in detention facilities; and
- Serious systemic prisoner abuse at El Cajon jail.

**May 25, 1990:**

Board of Supervisors Agenda Item 88

Grand Jury Report # 13 "The Establishment of a Citizens' Advisory Review Board to Monitor the Practices of the Sheriff's Department"

- Concludes it is vital that general public have confidence in their law enforcement agencies and personnel; and neither the Sheriff's Internal Affairs Unit nor the Grand Jury can function effectively as a Citizens' Advisory Review Board;
- Calls for establishment of an independent review board to oversee Sheriff's Department practices.

**June 12, 1990: Board of Supervisors Item 111**

Citing earlier Grand Jury reports, the Board of Supervisors considers Board letter from Supervisor Golding; CAO and County Counsel are directed to analyze various review board options. 5-0 vote.

**July 24, 1990:**

Board of Supervisors Agenda Item 69

- CAO reports on establishment of an independent citizens review board to investigate, review and monitor practices and policies within the Sheriff's Department;
- Compares a review board with limited investigatory power (Ordinance Advisory Board) or one with subpoena power(Charter Advisory Board or Second Grand Jury);
- Discusses pros & cons of the three types review mechanism;
- Notes fiscal impact of \$347, 000 first year of which \$30, 000 would be start up costs.

**July 31, 1990:**

Board of Supervisors Agenda Item 43

Board of Supervisors reviews County Counsel letter #733728 recommending Section 606 be added to Charter, and special election be held for purpose of submitting charter amendment to voters.

**November, 1990:**

Ballot measure passes by 61+%. Complaints begin to come in to county though no CLERB is yet implemented. Ballot arguments included the statement that Supervisor Golding proposed \$350,000 as the cost of the Review Board, and the cost was "small compared to million dollar jury judgments taxpayers are now paying for law suits that could be avoided."

**December 11, 1990:**

Board of Supervisors Agenda Item 43

Board of Supervisors begins implementation of CLERB. Four staff positions added to the Compensation Ordinance (Executive Officer, Special Investigator and two clerical positions). CAO notes this is minimal staffing is being recommended for this "break-in period."

Projected costs: \$337, 000 to start up, of which \$30, 000 is one-time start up cost.

Agenda Item 12:

Administrative Code and Compensation Ordinance changes relative to CLERB staff positions were introduced.

**December 18, 1990:**

Board of Supervisors approved a Compensation Ordinance change for CLERB staff by a 5-0 vote.

**January- May, 1991:**

Ongoing staff work and reports to the Board of Supervisors on implementation of CLERB.

**January, 1991:**

Randy Dibb (DSA President) files suit against county, seeking preliminary and permanent injunction to halt implementation of CLERB. Superior Court Case No. 633058.

**May 21, 1991:**

Board of Supervisors Agenda Item 61

First CLERB Members appointed; Ordinance language approved; Board Letter summarizes Members' qualifications. Members were briefed by County Counsel on Dibb's pending lawsuit and establishment of Rules and Regulations.

**October 1991:**

CLERB contracts for Retained Counsel services when County Counsel has conflict.

**December, 1991:**

15 complaints received since 11/90 vote.

**January, 1992:**

Eileen Luna hired as CLERB Executive Officer; negotiations on CLERB Rules and Regulations continue with Luna participating in Meet and Confer process between County and DSA.

**February, 1992:**

Superior Court denies Dibb's request for permanent injunction to halt CLERB implementation. Decision will be appealed.

**May, 1992:**

CLERB office opens at CAC. San Diego Probation's Training Manager, Sue Quinn, joins Review Board staff as Special Investigator and two clerks hired. Complaint investigations begin.

**July, 1992:**

Office start up continues; forms drafted; systems and processes to obtain information are developed. Meet and Confer process on CLERB Rules and Regulations continues.

**September, 1992:**

Second Special Investigator position added; defense investigator Jorge Hinojosa joins Review Board staff as Special Investigator.

**November, 1992:**

DA Ed Miller files *amicus* brief on the side of the deputies in Dibb's lawsuit, alleging that the Board of Supervisors had no authority to confer subpoena power on CLERB.

**December 31, 1992:**

78 complaints received during 1992 calendar year. Five full time staff members support the Review Board (Executive Officer, 2 Special Investigators and two clerical positions).

**March, 1993:**

Review Board begins its investigations and deliberations, and makes first findings on complaint and death investigations. Review Board conducts its business at open public meetings.

**May, 1993:**

Review Board's budget cut by \$12,000 (3.75%) to approx. \$304,560. No staff reduction.

**July, 1993:**

CLERB's fiscal year 1993-94 budget \$304, 560.

**August, 1993:**

Review Board makes first Sustained finding against a county peace officer (Probation Death Investigation of vehicular manslaughter & inmate death) and makes its first discipline recommendation.

**September, 1993:**

4th District Court of Appeal rules on Dibb vs. County of San Diego that the Board of Supervisors did have authority to create CLERB and vest it with subpoena power. DSA files a petition for rehearing; decision will be appealed.

**November, 1993:**

Following several months' consideration and input from local news media and the First Amendment Coalition, Review Board makes its Investigative Reports available to the public on request *at the time they are mailed to Review Board Members*. Previous policy had them available *at noon on the day of the meeting at which they were to be considered*.

**December, 1993:**

111 complaints received during 1993 calendar year. Five permanent staff members continue to serve the Board.

**June 12, 1994:**

Board of Supervisors approved CLERB's Rules and Regulations after months of Meet and Confer process followed by Fact finding.

**July, 1994:**

CLERB's Fiscal Year 1994-95 budget set at \$313, 585.

**September, 1994:**

Special Investigator Hinojosa goes to half-time.

**December, 1994:**

California Supreme Court upholds CLERB and its subpoena authority. Review Board begins administrative implementation of subpoena power. CLERB intends to use this power only if needed and if witnesses refuse to give voluntary statements. Five permanent staff positions are budgeted, yet, one Special Investigator position is vacated and left unfilled.

Sheriff Roache leaves office.



182 complaints received during 1994 calendar year.

**January, 1995:**

Henry Hodge succeeds Marilyn Lassman as Chairperson of the Board. Walter Heiser assumes the Vice Chairperson position. Marilyn Lassman assumes the Secretary position.

**March, 1995:**

Sheriff Kolender addresses Review Board and states the Sheriff's Department will do its best to cooperate with CLERB.

**April, 1995:**

Board's Subpoena Implementation Procedure finalized. Review Board subpoenas will not be issued unless attempts to obtain information by voluntary means are unsuccessful.

Executive Officer Luna is granted a one year unpaid leave of absence to attend Harvard Program for Public Administrators, effective late July 1995. Special Investigator Quinn appointed Acting Executive Officer during that time.

**May, 1995:**

Special Investigator David Fortman is hired. His experience includes defense investigation, medical examiners' investigations, and correctional officer.

**June, 1995:**

CLERB issues first subpoenas to Investigative Interviews (confidential interviews in CLERB offices); deputies appear, refuse to be sworn; their attorneys speak for them.

**July, 1995:**

County Chief Administrative Officer proposes CLERB budget of \$308,400 (96% of 1990's projected annual cost of CLERB). CLERB has 80 open investigations.

**August, 1995:**

During Budget Deliberations, and without taking public comment, the Board of Supervisors cut CLERB's proposed budget of \$308,400 to \$158,000, reducing staff from five to two (Executive Officer and Special Investigator). Following public protests, the Board decided to review its cut in September.

**September, 1995:**

Following deputies' refusal to give statements in confidential staff interviews, CLERB issues first subpoenas deputies to appear at public Investigative Hearings. Deputies appear, refuse to be sworn; their attorneys speaking for them. CLERB begins legal action to enforce subpoenas. CLERB workload begins to rise significantly.

Following public comments by numerous persons and groups representing many segments of county citizens and groups, all favoring restored funding of CLERB, the Board of Supervisors postpones a decision on CLERB's budget until December.

**December, 1995:**

Deputy Sheriffs' Association attorneys file suit alleging Superior Court does not have jurisdiction over CLERB subpoena enforcement; Presiding Judge William Howatt rules that Superior Court does have jurisdiction.

CLERB and DSA Attorneys argue in Superior Court for and against enforcement of subpoenas in two Investigative Hearings (93-0079/R. Lopez and 92-0002/Cardiff Town Council/Reynolds Death Investigation). Judge Howatt's decision is pending.

CLERB requests restoration of \$88,164 of the \$150,000 cut in order to pay for one clerical position and a second investigator. This budget, if authorized, would be 20% less than fiscal year 1994-95.

Following public comments by numerous citizens and groups again representing many segments of county, and all calling for budget restoration, the Board of Supervisors trails its decision on CLERB's budget until Sheriff Kolender can be present to respond.

Sheriff appears; says CLERB "isn't working" and suggests a "workgroup" consisting of himself, the District Attorney, County Counsel, a Supervisor, and DSA to meet with CLERB to help it "work." Board of Supervisors support this and restore \$36,000 for litigation.

CLERB's workload of complaints under investigation increased from 80 in July to 132 by December 31.

236 complaints were received in 1995 calendar year. There was a backlog of 132 investigations on 12-31-95. The two staff members are working uncompensated overtime to manage the workload.

**January, 1996:**

Jim Rady succeeds Henry Hodge as Chairperson of the Board. Darlee Crockett assumes the Vice Chairperson position. Delia Talamantez assumes the Secretary position.

Judge Howatt rules that the subpoenaed deputies in the two test cases must appear before CLERB. Those appearances are to be rescheduled.

**February, 1996:**

The Sheriff's "Workgroup" meets twice.

CLERB initiates meetings with DSA and Sheriff's Administration to explore alternatives to continued court actions. CLERB identifies four ways deputies can provide statements in CLERB investigations:

- Deputies could voluntarily (CLERB's preferred choice) provide written or oral statements in confidential CLERB staff interviews; statements are then summarized in reports;
- Sheriff could compel deputies' participation in CLERB investigations; deputies granted Lybarger protections;
- DA could grant prosecutorial immunity; or
- CLERB could subpoena deputies.

**March to August, 1996**

CLERB meets with DSA and Sheriff's Administration to attempt to implement any of the four alternatives

above.

As an expression of good faith and its willingness to respond to deputy privacy concerns, CLERB unilaterally removes deputy names from monthly Agendas, Minutes and Annual Report.

During this time the Sheriff's Administration assigns a sergeant in Internal Affairs to respond to CLERB subpoenas for documents. This sergeant was the Subject Officer in a sustained complaint in 1995. Department responses to CLERB subpoenas for documents lag; are incomplete and untimely. CLERB backlog grows.

#### **Summer, 1996**

DSA attorneys confirm they will never advise deputies to give CLERB voluntary statements. However, they suggest if the Sheriff will compel deputies to give CLERB statements, DSA attorneys may permit the deputies to cooperate with CLERB investigations.

Board of Supervisors approve CLERB Fiscal 1996-97 budget at \$199,000. Staffing level remains two.

#### **August, 1996**

The Sheriff confirms he will not compel deputies to testify.

#### **September, 1996**

Investigative Hearings in four investigations to be scheduled, with subpoenas issued to Subject and Witness Officers following the failure to implement an alternative to subpoenaed participation by Subject Officers.

#### **October, 1996**

CLERB and DSA returned to Superior Court for ruling on whether deputies must testify at CLERB's public hearings. Judge Howatt requested both sides file further pleadings on the applicability of California Peace Officers' Bill of Rights to CLERB proceedings. Matter continued to late December for both sides to research the legislative intent.

#### **December, 1996**

247 complaints received during 1996. 86 complaint and death investigations completed. There is a 143 investigation backlog on 12-31-96. The two staff members worked 2.7 staff years (.7 representing uncompensated overtime) to complete the investigations reviewed by the Board. A staff of four is required to manage this workload and backlog at present.

#### **January, 1997**

Darlee Crockett succeeds Jim Rady as Chairperson of the Board. Art Thompson assumes the Vice Chairperson position. Thelma Archuletta assumes the Secretary position.

#### **February, 1997**

CLERB is notified to relocate offices to Rooms 300 and 361 in the County Administration Building.

#### **March, 1997**

Board member Ed Schick announced his resignation. Cheryl Fisher and Jacquelyn Sherman-Rustin replace Henry Hodge and Delia Talamantez on the board. The Grand Jury, in a letter, backs CLERB budget increase. Superior Court Judge Michael Howatt denied DSA petition to prevent CLERB from taking

deputies testimony in public session.

#### **April, 1997**

John Parker, Chief Investigator of the San Francisco Office of Citizen Complaints, was appointed as Executive Officer, effective May 5, 1997.

#### **May 1997**

John Parker became second Executive Officer; Sue Quinn reverted to Special Investigator, replacing David Fortman.

#### **Summer 1997**

Grand Jury issues a report critical of the Board of Supervisors decision to cut CLERB funding and the BOS referred the report to John Parker for response. The response contained an analysis of investigator/caseload ratios between the Sheriff's IA and CLERB staff, as well as other risk considerations, with a recommendation to/for the Board of Supervisors to restore full funding to CLERB. John Parker met with Sheriff's official, Board of Supervisors, and other key County administrators to discuss funding/staffing.

**\*Unknown date** [will research]: Judge Howatt ruled that deputies could not invoke a "blanket" right against self incrimination under the 5<sup>th</sup> Amendment, but rather on a question-by-question basis. He further stated that (unless we could work out our differences) any time CLERB wanted to question deputies, we could submit our questions to the court (as a discovery motion) and the court would determine which questions were relevant and must be answered.

#### **August 1997**

John Parker, Darlee Crockett and Jim Sandler begin holding meetings with Assistant Sheriff Zoll, other Sheriff's officials, DSA board members and attorneys, to explore ways to gain the cooperation of Sheriff's deputies in the investigative process.

#### **September 1997**

Sue Quinn leaves position of Special Investigator to return to Probation Department. John Parker and an unpaid GAIN worker maintain "skeleton" staffing & operation of CLERB.

#### **December 1997**

Board of Supervisors restored "full budget" to CLERB, enabling hiring of new staff. CLERB offices were moved to the *Star Building* at 734 W. Beech Street.

#### **February 1998**

Two new investigators (Don Williams & Lynn Setzler) and an Administrative Secretary (Marilyn Johnson) were hired

#### **May 1998**

Agreement reached on a process for questioning deputies through interviews or written questionnaires; granting confidentiality under POBR & 832.7 PC. For the first time ever, a "full" investigative process involving deputies' input was initiated.

#### **Early 1999**

CLERB agrees to adopt a “short-form” *Summary Dismissal Report* for cases, using solvability factors to set investigative priorities and determination of cases qualified for expedited closure. Some of the factors considered are a lack of [critical] evidence; complainants and/or key witnesses no longer available, or fail to cooperate in the investigation; or the named members are no longer employed by the County.

Further steps were taken to better identify and ensure that cases not within CLERB jurisdiction were referred to the appropriate agency rather than getting logged even temporarily as a complaint. The impact of these two steps in saving valuable staff resources for the legitimate caseload went a long way in clearing away a large backlog and better focusing on important cases.

## **2000**

This is the tenth anniversary of the establishment of CLERB. The Appellate Court issued the “Caloca decision,” stating essentially that CLERB *Sustained* findings alone constituted “punitive action.” The court ruled that deputies could appeal CLERB findings to the Civil Service Commission.

## **2001**

CLERB moved its offices from Beech Street to subleased space at 625 Broadway. Based on advice and assistance from DMG Maximus, a government advisory business specializing in SB 90 (state mandates) claims, CLERB filed claims for a portion of its complaint related work in the amount of \$295,261. Although the state does not adequately fund many state mandated activities, we are told that we will eventually recover this and future amounts claimed for reimbursement.

Based on the County’s new out-sourcing of Information Technology, CLERB had its computer inventory and software completely updated. CLERB also completed the purchase of new database software, *Administrative Investigations Management (AIM)*. Delivery is scheduled for early 2002.

## **2002**

After over a year of legal wrangling, the Civil Service Commission enacted Rule XV which will govern CSC hearings of CLERB cases.

At the DSA insistence, a waiver form was created for deputies who choose not to be interviewed in CLERB cases. The form states essentially that deputies understand that if they choose not to be interviewed, CLERB may in some cases not have exculpatory evidence which could only be provided by the deputies and they do so knowing that an adverse finding could result.

In November, 2002, we learned of the passing of Jim Butler, a moving force behind the establishment of CLERB and a constant advocate for civilian review everywhere.

## **2003**

Two Appellate Court cases originating from the City of San Diego on issues of confidentiality rights of peace officers will greatly affect CLERB’s ability to issue public investigative reports and to hold public case hearings. (The cases are *SDPOA v. City of San Diego Civil Service Commission* (2002) 104 Cal. App. 4<sup>th</sup> 275; and *Charles Davis et al. v. City of San Diego* (2003) 106 Cal. App. 4<sup>th</sup> 893) By mid year, CLERB was notified by the DSA [of their belief] that these cases applied to our public case hearings and public access investigative reports. On advice of counsel – both County and our own retained attorney – we ceased public case hearings and release of case reports pending outstanding appeals and CLERB rule changes.

In June, CLERB moved its offices to a county owned building at 1168 Union Street, Suite 400.

#### **2004**

CLERB sought to amend its procedures to redact deputy identification from its reports in order to keep them public. The DSA rejected this proposal, and the County will not authorize litigation on the matter until all [current] appeals are disposed of.

The Copley Press appealed the SDPOA case decisions, winning at the Appellate Court, but the DSA promptly filed a challenge to that ruling at the CA Supreme Court by the end of 2004. Reference: #04-134 Copley Press, Inc. v. Superior Court, S128603. (D042252; 122 Cal. App. 4<sup>th</sup> 489; San Diego County Superior Court; GIC807922.)

#### **2005**

There was no resolution of the Copley Press appeal from the CA Supreme Court during this year.

There was one CSC hearing of a CLERB sustained case, resulting in the CLERB findings being upheld.

November 2005 marks the 15<sup>th</sup> anniversary of the vote establishing CLERB.

#### **2006**

The Copley Press case was [finally] decided by the CA Supreme Court and the ruling was against Copley and, consequently, openness of our process. We will remain status quo: no public hearings or reports. The review board in Berkeley has challenged the findings of the court as they have been applied to similar agencies intended to be open processes. There are also discussions in the greater LA and SF Bay Area regarding legislative action to exempt review boards from the confidentiality rules imposed by the associated cases (*Davis; SDPOA; and Copley*).

John Parker announced his retirement effective March 15, 2007.

Julio Estrada, investigator from the Medical Examiner's Office, joins the CLERB team, bringing bilingual and medical expertise.

#### **2007**

It was announced in February 2007 that Carol Trujillo would replace John Parker as Executive Officer upon retirement.

Expanded release of public information by including rationale statements with recommended findings in agenda.

Completed revised color brochures in English and Spanish.

Senate Bill 1019 (Romero) was introduced in the State senate to abrogate Copley v. Superior Court. County Counsel provided the board with an overview of the proposed legislation; staff continues to monitor the bill. Heavy criticism by law enforcement lobby, stressing that confidentiality protected officer safety, resulted in bill not garnering a single vote to make it out of the Senate Public Safety Committee. Similar bill, AB 1648,

also stalled. Both are two-year bills and both are not expected to progress.

Sheriff's Department added commendations and complaints feature to website, giving CLERB's contact information and link to its website.

Board changes: Tom Miliefsky and Glenn Quiroga resigned. Kourosh Hangafarin was terminated because of three consecutive absences. Patrick Hunter resigned to become Executive Director of CRB. George Delabarre, Sheryl Bennett, Jim Achenbach, and Riley Gordon were appointed. Eddie Castoria agreed to serve as secretary, replacing Patrick.

Sgt. Tony Giammarino, Sheriff Department liaison was promoted to lieutenant and replaced by Sgt. Tony Ray. Professional Standards is created. Unit expanded and renamed to Division of Inspectional Services.

Training presentations included: Policing in Indian Country (John Madigan), Homicide Unit's Investigation of an Officer-Involved Death (Sgt. Roy Frank), the DA's review of Officer-Involved Deaths (Special Investigations Unit), Update on Vista Station (Captain Ed Prendergast), Sheriff's Department Orientation (for Trujillo and Delabarre), PRISM training, tours of Central Jail (Achenbach, Delabarre, Emme attended.)

Community Outreach included: DA press orientation on OIS, Eden Gardens community forum, Vista Latino Advisory Committee, presentation to DAI command staff, interviews by Orange County staff and Los Angeles Ombudsman, presentation to Mexican Consulate, NACOLE conference in San Jose, CA.

Ended year with 141 new complaints (31% increase from 2006), 81 open cases (up from 32 at close of 2006.) July and October meetings were cancelled. Staff met all QF goals for 2006-07.

## **2008**

Julio Estrada resigned and returned to the ME's office in April 2008; recruitment initiated for a replacement; former police officer Danica James was hired in September 2008. February 2008 marked Lynn Setzler's 10<sup>th</sup> anniversary with CLERB. April 2008 marked Victoria Ollier's 4<sup>th</sup> anniversary with CLERB; Vickie transferred to HHS in June 2008. Ana Marie Becker, formerly of the Medical Examiner's Office, started as CLERB's half-time Administrative Assistant III in October 2008.

Training presentations included: Probation Orientation for members appointed in 2007; Introduction of new Assistant Sheriff Rob Ahern, Human Resources Bureau; briefing by Lt. Margaret Sanfilippo on Division of Inspectional Services; New Vision for Probation by Chief Probation Officer Mack Jenkins, Sheriff's Internal Affairs.

Community outreach included: presentation to SDSU classes on April 15 and April 23; presentation to ECC class on April 23, presentation to Brazilian officials studying prison administration on April 14, 2008; "best practices" interview with CHP executive office of internal affairs.

Board Member Otto Emme resigned due to a one-year deployment with California's Army National Guard in Kosovo. Sgt. Dave Paseman succeeded Sgt. Tony Ray, who was promoted to lieutenant.

May, July, September and November meetings cancelled due to five-month investigator vacancy –

insufficient number of cases completed to justify holding a meeting these months.

Ended year with 105 complaint intakes, a 36% decrease from 2007 (141), and 61 open cases, a 25% decrease in inventory from 2007 (81). Staff met all QF goals except for finishing cases within one year of receipt: 2 cases (98%) of 141 received in 2007 were finished beyond one year.

## **2009**

Special Investigator Danica James left CLERB in February 2009. Due to budget constraints, this position was held open through FY's 08-09 and 09-10. Executive Officer Trujillo assumed her caseload and share of investigative duties; Special Investigator Lynn Setzler assumed AIM (case management program) tracking duties for all cases.

The Review Board elected Jim Achenbach as chair, Don Warfield as vice chair, Eddie Castoria as secretary in January. Loren Vinson, a retired deputy chief probation officer, was appointed in February 2009 to fill the vacancy in the Third District left by Otto Emme. Former chair Robert Winston termed out in June 2009. Sgt. Scott Amos replaced Sgt. Paseman, after the Division of Inspectional Services was downsized to fill gaps in the field.

The Review Board met every other month (January, March, May, July, September, November) to accommodate the special investigator vacancy.

Training for the Review Board included a presentation on medical services in the jails by Sheriff's Medical Director Dr. Earl Goldstein; Sgt. Amos followed up with a presentation on a deputy's duties in medical situations.

## **2010**

Review Board presentations were conducted by the San Diego County Sheriff Department addressing Shooting Reaction Times, Vehicle Towing Policy, and Jail Population Management. Chief Administrative Officer Walt Ekard addressed the Review Board, and Kevin Keenan, Executive Director for the ACLU San Diego-Imperial Counties presented the Review Board with a community perspective.

Carol Trujillo resigned as Executive Officer in effective April 1, 2010. Patrick Hunter was appointed Executive Officer by the Board effective June 1, 2010.

Mark Watkins, investigator from the Public Defender's Office, joined the CLERB team in July.

Debra DePratti-Gardner and Calixto Pena appointed in September to fill vacant seats in Districts 2 and 1, respectively

Board Chair Jim Achenbach and Executive Officer Patrick Hunter attended the 2010 NACOLE Conference held September 19-23, 2010 in Seattle, WA.

## **2011**



Training presentations included: Probation/Sheriff's Department joint effort "Watchful Eye," Public Defender presentation on Detentions, Pat-Downs, and Arrest, Sheriff's Department Equipment and Technology, Psychiatric Emergency Response Team, and AB 109, Public Safety Realignment. Chief Probation Officer Mack Jenkins addressed the Review Board.

Shiri Hoffman was assigned as CLERB's Deputy County Counsel upon the departure of Deputy County Counsel Karen Landers.

Review Board elected new officers: Jim Achenbach-Chair, George DeLeBarre-Vice Chair, Eddie Castoria-Secretary.

Sergeant Kevin Menzies was introduced as the new CLERB Processor, taking over for Sergeant Scott Amos who was promoted and transferred to Court Services.

Sheriff's Department memorialized the requirement for Division of Inspectional Services to notify CLERB in all fatal Deputy-Involved Shootings and Deaths In-Custody.

Thomas Iniguez completed his final term.

Israel Garza was appointed to fill the District 1 vacancy created which resulted from Thomas Iniguez reaching his term limit.

Bob Kanaski was introduced as the new Executive Officer, Division of Inspectional Service, Sheriff's Department replacing John Madigan.

Carolyn Norris Rhein resigned from the Board in September. Clifford O. Myers III appointed to fill the District 5 vacancy created by the resignation of Carolyn Norris Rhein.

Supervising Probation Officer Mark Palmer was introduced as the new CLERB liaison for the Probation Department, replacing Cesar Escuro.

Board Chair Jim Achenbach and Executive Officer Patrick Hunter attended the 2011 NACOLE Conference held September 11-14, 2011 in New Orleans, LA.

Review Board elected 2012 officers: Jim Achenbach-Chair, George DeLeBarre-Vice Chair, Eddie Castoria-Secretary.

## **2012**

Training presentations included: Allegations and Findings, Restraining Orders, Detentions Investigations, and Probation Searches/4<sup>th</sup> Amendment Waiver Searches.

Sheriff William Gore discussed Public Safety Realignment (AB 109). Offered appreciation for CLERB's work in the investigation and review of complaints, and specifically the Board Member's dedication of time and effort as volunteers. Stressed the Sheriff Department's commitment to support CLERB's mission to conduct civilian oversight of law enforcement.

Subject deputy in CLERB Case 12-012/Hall appealed CLERB's Sustained finding.

Eddie Castoria resigned September, creating a vacancy in CLERB's floating appointment position. The floating appointment shifts from District 4 to District 5.

George DeLaBarre, Riley Gordon, Cliff Myers, and Calixto Pena were reappointed to terms ending June 30, 2015.

Special Investigator Mark Watkins reached 25 years with the County of San Diego (2 years with CLERB).

Discovery request by claimant in CLERB Case #09-059/Torbert, denied in Federal Court.

Israel Garza tendered resignation due to upcoming employment with the County Treasurer and Tax Department.

Nomination for Executive Board Secretary: Loren Vinson was nominated and approved by motion.

CLERB co-hosted, along with the City of San Diego Citizens' Review Board on Police Practices, the 18th Annual Conference of the National Association for Civilian Oversight of Law Enforcement (NACOLE) October 14-18, 2012.

Review Board elected 2013 officers: Jim Achenbach-Chair, George DeLeBarre-Vice Chair, Loren Vinson-Secretary.

## **2013**

Training presentations included: Sheriff's Use of Force, District Attorney Role in Officer-Involved Shootings, Task Force Operations, 4<sup>th</sup> Amendment Wavier Searches, Impact of AB 109 on Detentions, Detention Facilities Video Capabilities. Sheriff's and Probation orientations were conducted for new Review Board Members, and Review Board Members toured San Diego Central Jail.

Civil Service Commission (CSC) appeal for CLERB Case 12-012/Hall was rescheduled for February 2013. CLERB's witness was unavailable to attend the hearing, and therefore had no additional evidence to present at the hearing. Legal Counsel recommended, and the Executive Officer concurred, that the hearing would take place without further CLERB action. The CSC ruled the finding was Not Sustained.

Sergeant Kevin Menzies, Sheriff Department liaison was promoted to lieutenant and replaced by Sgt. Dave Schaller.

CityBeat San Diego began a series addressing deaths in the San Diego County Jails.

James B. Lasswell was appointed to fill the District 5 vacancy created by the resignation of Board Member Eddie Castoria.

Civil Service Commission (CSC) appeal for CLERB Case 12-057/Salazar was filed and withdrawn.

Sandra I. Arkin (District 4) and Delores Chavez-Harmes (District 5) replaced Board Members Louis Wolfsheimer and Sheryl Bennett in July at the completion of their full terms.

On August 19, 2013, the Sheriff's Department, commenced law enforcement operations on the campuses of Grossmont Community College District. Contract with the District is similar to those signed with Contract Cities for law enforcement services.

Kristen Laychus was assigned as CLERB's Deputy County Counsel upon the maternity leave departure of Senior Deputy County Counsel Shiri Hoffman.

Gary R. Brown was appointed to fill the vacancy resulting from Israel Garza's resignation.

Board Chair George DeLaBarre and Executive Officer Patrick Hunter attended the 2013 NACOLE Conference held September 22-26 in Salt Lake City, UT.

CLERB moved its offices from Union Street to leased space at 555 West Beech Street, Suite 505, San Diego.

Sgt. Dave Schaller, Sheriff Department liaison was promoted to lieutenant and replaced by Sgt. Gary Crowley.

## **2014**

Training presentations included: Detentions Grievance Procedures, Detentions Medical Services and Suicide Prevention, AB 109 Re-entry and the Community Transition Center. Review Board Members toured the new Las Colinas Re-entry Detention Facility and Vista Detention Facility.

Review Board elected 2014 officers: George DeLaBarre-Chair, Loren Vinson-Vice Chair, Debra DePratti-Gardner-Secretary.

Jim Achenbach completed his term on the Board.

Gary R. Brown and Loren Vinson were reappointed to their first and second full terms, respectively.

August 2014, Phase I of the Las Colinas Detention Reentry Facility was completed; inmates were relocated from the old Las Colinas Detention Facility on August 15, 2014.

Sgt. Gary Crowley, Sheriff Department liaison was promoted to lieutenant and replaced by Sgt. Russel Shimmin.

Board Chair George DeLaBarre and Executive Officer Patrick Hunter attended the 2014 NACOLE Conference held September 14-18 in Kansas City, MO.

P. Darrel Harrison was appointed to fill the District 2 vacancy which resulted from Jim Achenbach reaching his term limit.

In December 2014, CLERB received \$300,327 as a result of SB 90 reimbursement for state mandates pertaining to the Peace Officer Bill of Rights documentation.

## 2015

Training presentations included: Sheriff's Department Tow Procedures, Detentions Medical Services and Suicide Prevention, and Interim Body-Worn Camera Policy. Probation orientation conducted for new Review Board Members, and Review Board Members toured San Diego Central Jail, East Mesa Reentry Facility and George Bailey Detention Facility. Sheriff Gore addressed the Review Board in June 2015.

Executive Officer Patrick Hunter, Board Chair George DeLaBarre, Outside Counsel Jim Sandler, Divisional of Inspectional Services Bob Kanaski, and Senior Deputy County Counsel Shiri Hoffman, met with Roger Granbo, Senior Assistant County Counsel from the County of Los Angeles, concerning the Review Board's operation.

Executive Officer Hunter, Chairperson George DeLaBarre, and Vice Chairperson Loren Vinson will speak to Women Occupy San Diego regarding CLERB.

Review Board elected 2015 officers: Loren Vinson-Chair, Sandra I. Arkin-Vice Chair, Debra DePratti-Gardner-Secretary.

2013 Annual Report presented to Review Board and released.

Calixto Pena announced his resignation, creating a vacancy in District 1.

Civil Service Commission (CSC) appeal for CLERB Case 12-108/Malacara was heard in June 2015. The CSC ruled the finding was Sustained.

George DeLaBarre (District 4) and Riley Gordon (District 3) completed their terms on the Board.

Lourdes Silva was appointed to fill the District 1 vacancy which resulted from the resignation of Calixto Pena.

Clifford Myers (District 5) was reappointed to his second full term.

Executive Officer, Patrick Hunter and Chair, Loren Vinson conducted an informational presentation to the Grand Jury.

Board Chair Loren Vinson and Executive Officer Patrick Hunter attended the 2015 NACOLE Conference held October 4-8 in Riverside, CA.

Sheriff's Department introduced the Interim Policy & Procedure: Body Worn Cameras (BWC) Field Test/Evaluation. Board Members discussed the Interim Policy & Procedure: Body Worn Cameras (BWC) Field Test/Evaluation presentation, and directed that the Executive Officer send the Review Board recommendations to the Sheriff.

Deputy County Counsel Kristen Laychus went on a temporary leave of absence (maternity) and Deputy County Counsel Emily Kuznicki was assigned to cover during her absence.

## 2016

Training presentations included: Stops/Detentions/Arrests/Field Interview Reports/Photographs, Sheriff's Department Disciplinary Procedures, and Inmate Programs in Detention Facilities. Chief Probation Officer Adolfo Gonzales addressed the Review Board. Sheriff's and CLERB orientations were conducted for new Review Board Members, and Board Members toured the Community Transition Center (CTC). Review Board Members/Staff attended Police Accountability and Oversight Workshop hosted by the Los Angeles Police Department Inspector General, and Use of Force Liability Training for Public Agencies hosted by the San Diego Regional Training Center.

Courtney Chase was appointed to fill the District 3 vacancy which resulted from Riley Gordon reaching term limit.

Kim-Thoa Hoang was appointed to fill the District 4 vacancy which resulted from George DeLaBarre reaching term limit.

Sheriff's Department commenced a 90-day pilot program to test body worn camera equipment. The Sheriff's Department later reported that they would need to reassess body-worn cameras equipment.

Debra DePratti-Gardner announced her resignation in March 2016. Nomination for Executive Board Secretary: Gary Brown was nominated and approved by motion.

Sgt. Russel Shimmin, Sheriff Department liaison, was promoted to lieutenant and replaced by Sgt. Dave Perkins.

Sandra Arkin, Delores Chavez-Harmes, and James Lasswell were reappointed to final terms.

San Diego County Grand Jury issued a report entitled, "Citizen Oversight Boards of Police Behavior." The report recommended that CLERB review the recruitment and appointment process to encourage broader citizen involvement; and, to provide limited compensation for board members time and involvement. County disagreed because the recommendations were not warranted.

San Diego County law enforcement agencies, including Sheriff's and Probation Departments, released policy that will govern the release of officer-involved shooting videos, a decision that police leaders hope will promote transparency and trust between police departments and the community.

Board Member Lourdes Silva and Executive Officer Patrick Hunter attended the 2016 NACOLE Conference held September 25-29, 2016 in Albuquerque, NM.

Division of Inspectional Services Executive Manager, Bob Kanaski, retired.

Senior Special Investigator Lynn Setzler reached 20 years with the County of San Diego (18+ years with CLERB).

2014 Annual Report presented to Review Board and released.

Civil Service Commission (CSC) appeals filed for CLERB Cases 15-051/Andrade and 15-053. Hearings are pending.

Lieutenant David Gilmore scheduled to replaced Bob Kanaski as Division of Inspectional Services Executive Manger.

Patrick Hunter resigned as Executive Officer effective December 8, 2016.

## **2017**

Lynn Setzler appointed Interim Executive Officer from January to June 22, 2017.

Paul R. Parker III appointed Executive Officer; his first day was June 23, 2017.

2015 Annual Report presented to the Board and released.

Courtney Chase resigned from the Board due to scheduling conflicts, effective July 13, 2017.

Clifford Myers resigned from the Board for personal reasons, effective September 1, 2017.

# **APPENDIX E**

# Citizens Law Enforcement Review Board (CLERB) Workload Analysis

## OVERVIEW

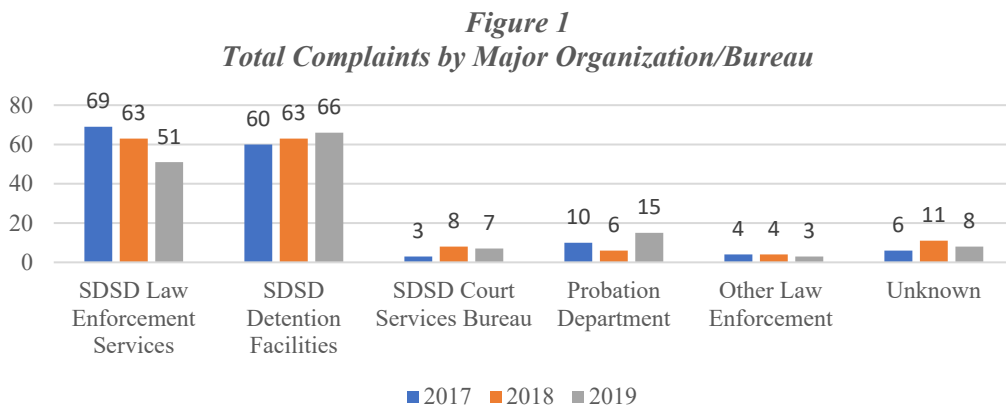
On June 23, 2020, the County of San Diego Board of Supervisors directing the Chief Administrative Officer to implement several recommendations that would expand the duties and authority of CLERB. This analysis will determine staffing needs, quantify anticipated workload volume, identify inefficiencies resolved by technology, and provide estimates of the resources required to ensure timely responses to citizen complaints.

The increase in investigations conducted as a result of the expanded areas of oversight will necessitate additional staff. The Chief Administrative Officer is recommending that the County add three CLERB positions and increase Services and Supplies (S&S) by \$45,000, resulting in CLERB’s overall budget increasing from \$1,052,309 to \$1,501,491, and issue a request for information on a new case management system and subsequently provide funding.

The critical task of determining findings at the conclusion of a citizen complaint involves careful review and analysis of the complaint facts. Investigative findings are based on the totality of the circumstances and the credibility of the evidence presented, including witness accounts. A great deal of time is spent researching policy and related laws, inspecting facilities, reviewing subpoenaed documents, drafting policy recommendations, and engaging in critical-review discussions and other related tasks. CLERB currently has limited use of information technology resources (e.g. online data management platforms, case management tools, dictation software).

## BACKGROUND

To quantify the investigatory workload, complaint data was collected for 2017, 2018 and 2019 (Figure 1). In 2019, CLERB logged 150 complaints prompting reviews of the actions of peace officers or custodial officers employed by the County Sheriff’s Department and the Probation Department. This is a 3% decrease from the 155 complaints received in 2018. The CLERB 2019 Annual Report shows graphs and information relating to complaints and allegations submitted.



In 2019, the three investigative staff and the Executive Officer completed 150 investigations for an average of 38 investigations per staff person. Workload per person was evaluated by taking the 150 complaints and dividing by the three current investigators and Executive Officer, equating to an average of 38 cases per staff. Table 1.1 shows the workload overview for the past three years, and Table 1.2 explains the cases closed in further detail.



**Table 1.1**  
**Workload Overview**

	2017	2018	2019
<b>Investigators Filled Positions</b>	2	2	4 <sup>1</sup>
<b>Total Complaints Submitted</b>	152	155	150
<b>Cases Closed by Board Action<sup>2</sup></b>	111	170	148
<b>Open Cases at Year End<sup>3</sup></b>	98	85	90

<sup>1</sup>2019 number includes three investigators and one Executive Officer

<sup>2</sup>Cases Closed includes cases from previous years

<sup>3</sup>Open Cases is the total cases still open from all years

**Table 1.2**  
**Cases Closed**

	2017	2018	2019
<b>Summarily Dismissed<sup>1</sup></b>	18	13	11
<b>One Year Summary Dismissal</b>	24	0	0
<b>Fully Investigated Cases</b>	69	102	79
<b>Procedurally Closed<sup>2</sup></b>	47 <sup>3</sup>	55	58
<b>Cases Closed by Board Action</b>	111	170	148

<sup>1</sup> dismissed for lack of jurisdiction or because further investigation was not possible without the complainant's cooperation

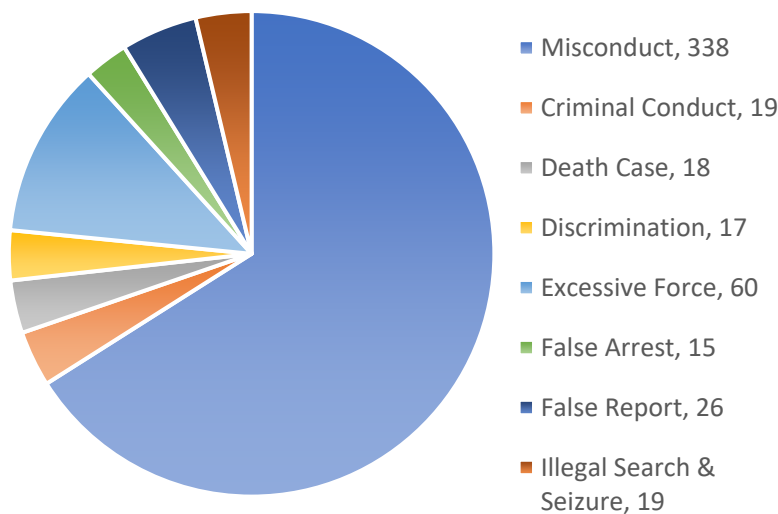
<sup>2</sup> signed complaint was not returned by the complainant

<sup>3</sup> For 2017, Procedurally Closed cases were already counted as part of Fully Investigated Cases.

The County Charter and Administrative Code specify CLERB's duties and authority, which include the investigation of complaints of the use of excessive force, discrimination or sexual harassment in respect to members of the public, the improper discharge of firearms, illegal search or seizure, false arrest, false reporting, and criminal conduct or misconduct. The Executive Officer assigns complaints (case assignment) to an investigator after a review of CLERB's current caseload, severity or urgency of a case, and statutory time limitations. It is important to note some citizen complaints may

have multiple allegations because multiple employees may be involved in one complaint and/or each complaint may contain multiple allegations. Each allegation within a case must be investigated and a summary review conducted. For the 150 complaints received in 2019, there were a total of 512 allegations. This is a 24% decrease from the 670 allegations reported in 2018. Figure 2 shows the breakdown of the allegations by category. Eighteen death cases were reported in 2019, a 21% decrease from the 24 in 2018.

**Figure 2**  
**Allegation Totals for Complaints Received, 2019**



CLERB Staff received complaints regarding three sectors: (1) Sheriff's Law Enforcement Services,; (2) Sheriff's Detention Facilities; and (3) Probation Department. In 2019, Sheriff's Law Enforcement Services had 69 complaints (46%) compared to the 86 complaints (56%) in 2018. The Sheriff's Detention Facilities experienced 66 complaints (44%) in 2019, which is an increase compared to the 64 complaints (41%) from 2018. The Probation Department had an increase of 15 complaints (10%) in 2019 compared to the six

complaints (4%) received in 2018.

With respect to workload increases, in 2019, the Board of Supervisors approved a revision to the San Diego County Code of Administrative Ordinance (sections 340 through 340.5) to authorize CLERB to conduct jail inspections. Detention Facility inspections have yet to begin due to COVID-19, and investigators are currently in the process of training for this additional duty. At full implementation, CLERB staff anticipates conducting seven inspections per year and presenting the findings to CLERB quarterly. Inspections will take a full day and an anticipated three to four weeks to draft the report.

CLERB met 12 times and closed 148 cases during 2019, compared to meeting 12 times in 2018 and closing 170 cases: a 15% decrease in case closures.

Of the 148 cases closed by CLERB, 11 cases were submitted for Summary Dismissal following an abbreviated investigation of a signed complaint. These cases were dismissed for lack of jurisdiction or because further investigation was not possible without the complainant's cooperation. This was a 15% decrease from the 13 cases Summarily Dismissed by the Review Board in 2018.

In 2019, there were no cases submitted to CLERB for One-Year Summary Dismissal, as all cases were completed within statutory timelines.

### **ESTIMATED CHANGES TO WORKLOAD**

On June 23, 2020 (28), the Board of Supervisors recommended that CLERB's authority be expanded to include:

- a. Authority to investigate any incidents involving the discharge of a firearm by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department
- b. Authority to investigate the use of force by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department resulting in great bodily injury
- c. Authority to investigate the use of force by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department at protests or other events protected by the First Amendment

While CLERB already has authority to investigate these instances with a complaint, the expansion in authority would allow CLERB to review these cases without a complaint. To estimate the changes in workload for the expansion in authority for a and b, statistics submitted to the Department of Justice (DOJ) were used. Currently, there is not enough information involving use of force by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department at protests or other events protected by the First Amendment.

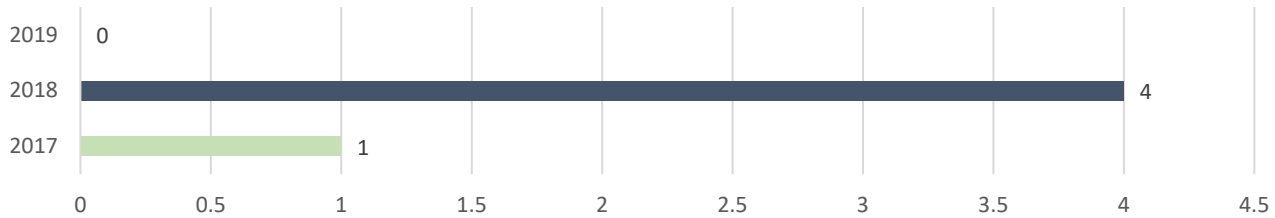
The DOJ Criminal Justice Statistics Center (CJSC) collects information on use of force incidents that result in serious bodily injury or death or involved the discharge of a firearm. Additionally, the San Diego County Sheriff's Department consistently reviews all use of force incidents for the benefit of the public and employees. In late 2015, the California legislature passed Assembly Bill (AB) 71, adding Government Code (GC) section 12525.2. Effective January 1, 2016, all law enforcement agencies (LEAs) were required to begin collecting data on use of force incidents for submittal to the DOJ beginning January 1, 2017.

The use of force (URSUS) incidents that result in serious bodily injury or death or involved the discharge of a firearm are reported annually from LEAs and other entities throughout the state that employ peace officers. The URSUS data is narrowly defined and does not represent the totality of use of force incidents that occur in California. LEAs are only required to report use of force incidents that result in serious bodily injury or death of either the civilian or the officer and all incidents where there is a discharge of a firearm. As such, caution must be used when using the data for comparisons or in calculating rates.

**a. Incidents Involving Discharge of Firearms (in Use of Force Incidents)**

Reviewing incidents involving the discharge of a firearm without a formal complaint may become an expanded scope of investigatory duty for CLERB. Figure 3 shows the incidents reported from 2017 to 2019. Reported firearm discharge to the DOJ does not include unintentional/negligent discharge or the shooting of aggressive or injured animals. Unintentional/negligent discharge are situations where a deputy improperly handled their firearm, failed to properly unload before cleaning, or possibly trips while performing lawful activities such as searching a burglarized or unsecured business, and unintentionally pulls the trigger. These occurrences are infrequent with one to two incidents tracked per year. Other examples could occur on training ranges during firearms qualifications, Academy, or In-Service classes.

**Figure 3  
Sheriff Incidents Involving Officers Discharging a Firearm, 2017-2019**



Based on these statistics, it is estimated that CLERB may have one additional case per year of an incident involving the discharge of a firearm by peace officers or custodial officers employed by the County Sheriff’s Department or the Probation Department.

**b. Use of Force Resulting in Great Bodily Injury**

The definition of great bodily injury varies across jurisdictions and agencies. Currently, the Sheriff’s Department follows the DOJ use of force report definition, which states, ‘serious bodily injury’ means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.”

Thirty-nine people sustained serious injury or death in Sheriff’s Department use of force incidents in 2019, including 36 civilians and three officers (Table 2). In these incidents, one civilian died through use of force in 2019.

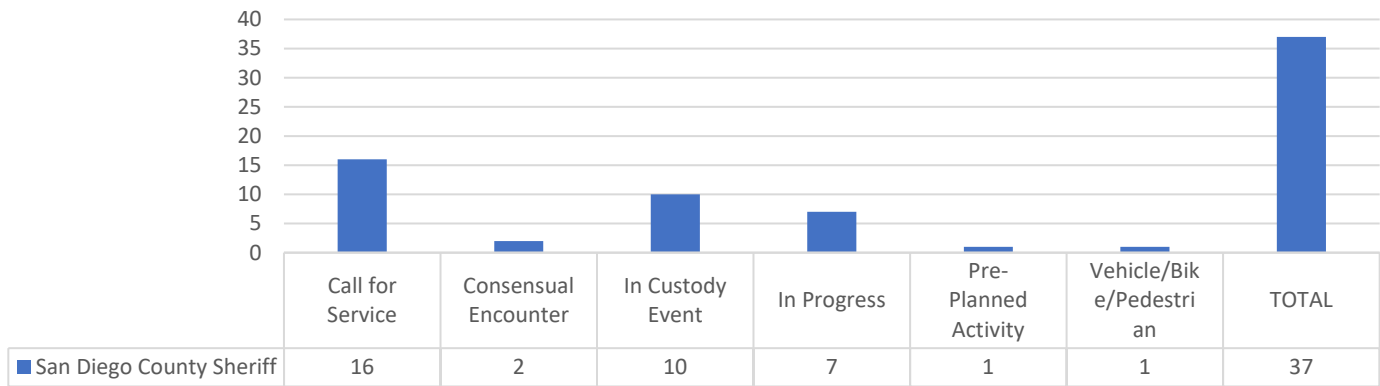
**Table 2  
Serious Injuries and Deaths Sustained in Sheriff Use of Force Incidents, 2019**

Injury Level	Incidents	Civilians injured	Officers injured	Total Injured
Death	1	1	-	1
Serious Injury	36	35	3	38
Total	37	36	3	39

*Use of Force Incidents by Contact Reason*

The California Department of Justice reports there were 37 reportable use of force with great bodily injury incidents within the Sheriff’s Department in 2019. Ten or 27% of the Sheriff incidents occurred in custody. Other than a small facility in Chula Vista, the Sheriff’s Department operates all jails in the County of San Diego. Sixteen or 34% of the Sheriff incidents were calls for service requesting a deputy response from a member of the public. Figure 4 excludes *use of force* data related to protests or other protected events.

**Figure 4**  
**San Diego County Reportable Use of Force Incidents by Contact Reason, 2019**



Based on these statistics, it is an estimated extra 36 cases to CLERB’s workload in a year, as CLERB already investigates all use of force deaths.

**c. Use of Force at Protests or Other Events Protected by the First Amendment**

There are currently no statistics related to use of force at protest or other events protected by the First Amendment, except for when formal injury complaints are filed. The Sheriff’s Department communicated difficulties that may arise when officers are managing large crowds, employing crowd control tools and techniques, and tracking and reporting impact to citizens. It is unknown how the number of protests or other protected events would impact CLERB investigative staff workloads utilizing the current, available data.

**RECOMMENDATION**

The analysis shows:

1. Expanded authority will result in an increase in workload based on the use of force DOJ data.
2. The current budget for services and supplies should be augmented for additional external legal support, related to the expanded workload.
3. To meet future case processing demands and conduct quarterly jail inspections, increasing the number of budgeted FTEs by two special investigators and one senior investigator will help mitigate potential risks. The senior investigator would allow the Executive Officer more time to handle the projected increase of outreach activities and potential increase interaction with the public.
4. Exploring the idea of a new case management system will help investigators to develop information on the investigative time requirements for each case type and related data management.

**Table 3**  
**Projected Annual Workload & Recommended Support**

	<b>2020</b>
Projected Annual Complaints	152
Additional Cases Estimated	37
Projected Number of Jail Inspections	7
Projected Total Workload <sup>1</sup>	196
Projected Number of Investigators	5
Projected Cases Per Investigator	39

<sup>1</sup> Projected Total Workload = Projected Annual Complaints + Additional Cases Estimated + Projected Number of Jail Inspections

The data in this report and shown in Table 3 demonstrate that each investigator is projected to manage an estimated 37 cases throughout the year. This does not take into consideration the start of jail inspections. The projected workload calculations are based on the average number of cases during the last three years and forecasted projected workload based on data reported by the California DOJ.

Recommendations:

- Add an additional three positions: one senior investigator with a supervisory role; one to support the additional projected workload oversight; and one full-time position to conduct detention facilities inspections and to provide investigative support to the team as needed.
- Increase the services and supplies budget for legal support and issue a request for information for a new case management system to be subsequently funded.

These recommendations assume that CLERB's authority is expanded following the required meet and confer process and the Board of Supervisors' adoption of an amendment to the Administrative Code.

# **APPENDIX F**

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## San Diego County Sheriff's Department - Procedure Section

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Personnel shall utilize a loading barrel/bullet trap, **if available**, located at each specific station or facility when loading and unloading their weapon(s).

If a perceived weapon malfunction occurs, a loading barrel will be used to safely render the weapon to a safe condition. **This does not apply to field operations, when returning a weapon back to a safe condition, or after deploying a particular firearm on a call for service.**

Tactical operations involving SED are the exception. These operations will be covered in the SED Operational Manual. (06-03-21)

<b>8.2 DISCHARGE OF FIREARMS</b>
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The Sheriff, at his or her discretion, may authorize professional staff members of the Department to carry firearms during the course of their duties and within the scope of their County employment. As such professional staff members authorized to carry firearms shall conform to the established procedures contained in this section. Possession of a valid Concealed Weapons Permit does not by itself authorize a professional staff member to carry a loaded and concealed firearm, while acting within the scope of their County employment.

The procedures contained in this section, regarding discharges of firearms, apply to all members of the Department, both on duty and off duty. For purposes of this section, the phrase "deputy involved" applies to all classification of employees, both sworn and professional staff.

Deputies and authorized professional staff members shall exercise the utmost care in their handling and use of firearms while engaged in the performance of their duties and while exercising their option to carry a loaded and concealed weapon while off duty. Fingers shall not be placed on the trigger of any firearm handled unless the conscious and lawful decision has been made to discharge the firearm, or while conducting an administrative functions check on an unloaded firearm.

Deputies and authorized professional staff members shall notify the Communications Center of any discharges of firearms as soon as is reasonably practical, regardless of whether the discharge was unintended.

When a shooting incident involving **ANY** firearm including specialty munitions is a negligent or unintended discharge, other than inside a loading barrel, the supervisor will advise the deputy that they are required to contact the Weapons Training Unit (WTU) to schedule training and requalification. The training shall be accomplished by the next working day.

The discharge of a firearm while using a loading barrel or bullet trap will be an exception. The command is required to complete an administrative investigation documenting the circumstances of the unintended discharge.

- No referral to Internal Affairs is required.
- The completed investigation will be sent to the Division of Inspectional Services (DIS).
- No discipline will result.

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## SECTION 8 Firearms

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## San Diego County Sheriff's Department - Procedure Section

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Discharge of firearms during participation in Department Qualifications, training, or practice at an authorized Sheriff's training facility or range is also an exception.

Unintended discharges of firearms during Department training or qualification events shall be reported to the WTU staff.

### **Communications Center**

Upon the notification of a deputy involved shooting incident, the Communication Center will utilize the "critical incident notification checklist" to make the appropriate callouts to notify the appropriate members.

If the shooting is confirmed to be an unintended discharge, the Communications Center will notify the involved deputy's immediate supervisor, the affected captain or station/facility commander and the WTU Sergeant or on-call deputy.

### **Sergeant**

The sergeant, upon notification of a deputy involved shooting, shall respond to the scene. The sergeant shall obtain a safety statement from the deputy involved.

The sergeant shall arrange transportation for the deputy involved in the shooting to the nearest Sheriff's station. At no time shall the deputy drive from the scene to the station alone.

The sergeant is responsible for crime scene management. The sergeant will ensure there is sufficient manpower to secure the scene, separate witnesses, etc. in accordance with Section Major Crime Scenes, Primary Responders.

The sergeant shall review all reports of the incident to ensure proper documentation has been made.

### **Homicide Unit**

- Upon notification of a deputy-involved shooting incident, the on-call Homicide Sergeant will make a determination of manpower requirements. The Homicide investigative team, under the direction of the Homicide-Sergeant, will thereafter conduct a thorough investigation of all factors related to the incident. A complete report of the incident will be prepared and submitted to the Homicide Unit Lieutenant. Homicide Unit procedure for deputy-involved shooting incidents will be followed as nearly as practicable in all cases.
- The Crime Laboratory will respond with a crime scene investigation team to assist in the investigation of any deputy involved shooting. The Crime Laboratory will send a Forensic Evidence Technician and Criminalist to properly document the scene. In addition to scene processing, laboratory personnel will respond to process each deputy involved in the shooting. Firearms discharged during the shooting will be collected and submitted to the crime laboratory for operability examination. Each involved deputy will also be photographed in order to document appearance and any sustained injuries.
- Deputies to Cooperate: All witness deputies involved will cooperate fully with the investigation, answering all questions asked, assisting with the investigation to accomplish its speedy conclusion and submitting all requested reports. Deputies involved in the actual shooting will be required to cooperate, consistent with State, Federal and

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## **SECTION 8 Firearms**

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## San Diego County Sheriff's Department - Procedure Section

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Constitutional due process provisions. As part of the investigation, all personnel involved, witnessing or having pertinent information, will submit a detailed report to their immediate supervisor covering the incident. This report will be completed prior to the end of their work shift. A transcribed interview conducted by the Homicide Unit may be used in lieu of the required written report. If prior to, or during the course of the investigation it appears the deputy could be charged with a criminal offense, the deputy should be immediately informed of his/her constitutional rights.

- **Collection of Weapons Fired:** Firearms discharged during the shooting incident will be collected and submitted to the Crime Laboratory for operability examination. Weapons and or gear may also be collected for other investigative purposes as determined by the Homicide Unit or other assigned investigator. At the conclusion of the incident, and prior to official inspection and testing, deputies shall not load, unload, or operate any weapon fired during the incident, except where it is clearly evident that such loading, unloading, or operation is necessary for the safety of the deputy(ies) and/or the public. All deputies who may have fired their weapons during an incident under investigation will turn them over to the investigator for appropriate testing. Deputies will turn over all expended cartridges and all of the ammunition carried by the deputy for use in the weapon(s) in question. A replacement weapon will be provided by the WTU. Every effort will be made to expedite inspection, testing and return of the weapon(s).
- **Conclusions/Recommendations Not Required:** Where it pertains to Department personnel, Homicide Unit investigators will not draw conclusions or make recommendations as to violation of Departmental policy or procedures.
- After review by the Homicide Unit Lieutenant, two copies of all reports will be submitted to DIS, who will determine any further action to be taken.

### **Weapons Training Unit (WTU)**

The WTU Sergeant or on call deputy, upon notification of a deputy involved unintended discharge, shall respond to the scene to assist the on-scene supervisor in determining the cause of the discharge. If the cause of the discharge is determined to be a result of a mechanical failure of the firearm, the WTU shall collect the firearm for armory analysis. (A replacement weapon will be provided by WTU)

Should an unintended discharge occur with the AR-15 Rifle, WTU will take possession of the weapon until the deputy involved in the unintended discharge has made arrangements for training and requalification on the weapon. WTU will be responsible for training and requalification. This will be accomplished as soon as reasonable.

The WTU Deputy shall prepare and submit a written report to the supervisor investigating the discharge.

### **Internal Affairs**

Internal Affairs is responsible for maintaining unintended discharge records as follows:

- Records on chargeable unintended discharges not resulting in formal discipline shall be maintained for 5 years then destroyed.

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## **SECTION 8 Firearms**

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## San Diego County Sheriff's Department - Procedure Section

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- Records on chargeable unintended discharges resulting in formal discipline shall become part of the employee's permanent discipline file.
- All pictures shall be attached to the report filed in Internal Affairs.

### **Discharge of Weapon in Other Jurisdictions**

Primary responsibility for the investigation of a deputy-involved shooting case rests with the agency in whose jurisdiction the incident occurs.

In cases in which some other agency has jurisdiction, (such as a deputy assisting with a robbery case in the City of San Diego) whether the deputy is "on duty" or "off duty," the following procedures will be followed:

#### **All Cases**

- The deputy involved shall immediately notify the agency of jurisdiction.
- The deputy involved will be responsible for ensuring that the Communications Center is advised of the incident, as soon as possible.
- The Communications Center will utilize the "critical incident notification checklist" to make the appropriate callouts to notify the appropriate members.
- The on-call Homicide Unit Sergeant will proceed as soon as possible to the scene and contact both the deputy involved and the senior investigating officer from the other department. A request will be made for a copy of all the reports to be sent to the Homicide Unit. All witness Sheriff's Deputies involved will cooperate fully with the other agency's investigation and assist them as requested. Sheriff's deputies actively involved in the shooting will be required to cooperate consistent with State, Federal and Constitutional due process provisions.
- The reports will be reviewed by the Homicide Lieutenant and a copy will be submitted to DIS for any further action.

### **Discharge of Weapon in Sheriff's Jurisdiction by Officers of Other Agencies**

Most law enforcement agencies have "shooting incident" policies similar to the Sheriff's Department. If one of its officers is involved in a shooting incident in the Sheriff's jurisdiction, the other agency will rely on the Sheriff's Department to conduct a comprehensive investigation. The other agency needs to determine if its officer acted within the scope of its policy. Also, as the responsible agency, the Sheriff's Department needs to determine if a crime has been committed or the safety of citizens jeopardized.

The Sheriff's Department will investigate shootings within the Sheriff's jurisdiction by officers of other agencies in the same manner as if the officers involved were members of the Sheriff's Department.

#### **Procedure - Deputy-Involved Shootings**

#### **Occurrence - Suspect or Law Enforcement Officer Wounded or Killed**

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## **SECTION 8 Firearms**

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## **San Diego County Sheriff's Department - Procedure Section**

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Deputies involved in a shooting will initiate the necessary emergency procedures:

- Administer appropriate first aid measures.
- Notify Communications Center.
- Secure scene.
- Isolate and keep witnesses separate.

### **Patrol/Detective Sergeant**

- Proceed to scene. Obtain a safety statement from the involved deputies.
- Remove and/or separate involved deputy(ies) from the immediate scene as soon as practical.
- Assume immediate supervision of the incident until arrival of Homicide Unit personnel.
- Confirm via Communications Center that the Patrol or Detective Lieutenant and the affected captain or station/facility commander has been notified and are enroute to the scene and that the appropriate on-call Homicide Unit Sergeant is notified.
- Assign appropriate personnel to take the necessary Crime Report of the incident.

### **Division Lieutenant**

- Proceed to scene.
- Assure that involved deputies are kept separate from each other, or from uninvolved deputies, to ensure independent recollection of the incident.
- When necessary, arrange for relief deputy personnel to assume duties of the involved deputy(ies).
- Assure that the involved deputy(ies) firearm is retained by the involved deputy(ies) for exchange by the Homicide Detective.
- With concurrence of the Homicide Sergeant, direct each involved deputy, unless injured, to proceed separately to an appropriate station, where each deputy involved shall remain separated from contact by uninvolved individuals. If transportation is needed, the division lieutenant shall provide it.
- Screen all communications and personal contacts with the involved deputy(ies).
- Provide any information sought by concerned command personnel or family members.

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## **SECTION 8 Firearms**

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## San Diego County Sheriff's Department - Procedure Section

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- Assess the demeanor and state of mind of the deputy, keeping in mind that postincident mental/emotional shock may ensue. Based upon his/her observations and evaluation of the involved deputy's demeanor, the ranking investigator shall defer any interviews for a reasonable time. This decision shall be contingent upon the mental and/or emotional state of the deputy. If the mental/emotional state of the deputy suggests the need for medical attention, the Supervisor shall make the arrangements.
- The deputy involved will be placed on administrative leave for at least 24 hours pending further action by the Personnel Lieutenant as defined by P&P Section 3.37.
- Prepare a timely comprehensive report of his/her actions, observations, and evaluations.

### Captain or Station/Facility Commander

Upon notification of a deputy-involved shooting where a suspect, employee or citizen is wounded or killed, the captain or station/facility commander will proceed to the scene for the purpose of monitoring all personnel activities

### Peer Support Unit

- In accordance with P&P Section 3.44, the Peer Support Coordinator shall be contacted by the Communications Center concerning all deputy-involved shootings.
- Once the Peer Support Coordinator has been notified, he/she will assign peer support personnel to respond to the scene and to contact the Homicide Supervisor upon their arrival.
- Upon concurrence of the Homicide Supervisor the peer support personnel will provide assistance to the deputy(ies) involved in the shooting. The Peer Support Coordinator will also assign peer support personnel to assist family members of the involved deputy(ies) when appropriate.
- At no time will the Peer Support Unit become involved in the investigative process, nor will it discuss any details of the shooting with the involved deputy(s) outside the presence of the Homicide Investigators. Spontaneous statements pertaining to the incident under investigation, by involved deputy(s), shall be recorded and reported to the Homicide Investigator. (Refer to Peer Support Policy 3.44) (06-03-21)

<b>8.3 AUTHORIZED FIREARMS AND SPECIALTY MUNITIONS SYSTEMS</b>
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Strict compliance with this order is mandatory.

- Alternate Duty = A firearm used in lieu of the Department issued Glock 22 or 17 during the normal scope of duties. Requires specific written command approval prior to firearm being issued.

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## SECTION 8 Firearms

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# **APPENDIX G**

## CLERB Board Member Nomination and Selection Ad Hoc Committee Revisions

### CLERB Ad Hoc Subcommittee Regarding Revisions to Appointing Board Members

Objective: To recommend to the CLERB Board for approval, a revised nomination and selection process for new Board Members, as directed by the San Diego County Board of Supervisors.

#### Recommendation

This Subcommittee recommends a two-prong approach including enhanced community involvement and a revision to the application process, as follows:

#### 1. ROBUST PUBLIC AWARENESS AND MEDIA CAMPAIGN

- a. Press releases advertising the Board Member vacancy shall be provided and media outlets will be alerted directly or through the County Public Information Officer.
- b. Enhanced community outreach efforts will be conducted, to encourage public participation. This shall occur through presentations made by CLERB's staff within San Diego County. These presentations may include:
  - i. The history of CLERB.
  - ii. CLERB's Mission.
  - iii. CLERB's processes and purpose (i.e. What we investigate and how complaints are filed and investigated).
  - iv. Investigators' responsibilities
  - v. Board Member responsibilities, including time commitment expected for participation by Board Members. It is recommended, that the ability for Board Members to review and maintain confidentiality and remain impartial is imperative.
  - vi. Additional CLERB activities, including, detention facility tours and inspections, and other training opportunities.

#### 2. BOARD MEMBER APPLICATION PROCESS

CLERB's BOARD should consist of two Board members from each Supervisory District within the County of San Diego and one at-large member. This ensures that there is public representation from within all areas of the County.

- a. Public Notice of a Board Member Seat Vacancy
  - i. When there is an upcoming Board Member vacancy in a district, public notices shall be sent out through press releases and other direct communications to the communities and civic organizations in that district.
  - ii. If possible, notices should be sent out 120 days prior to the opening and include the submission deadline. Notices will be sent earlier when there are unexpected changes.
  - iii. Applicants should attend one CLERB Board meeting prior to, and as a requirement of submitting an application.
  - iv. Applicants should submit their application directly to their District's Supervisor. Civic organizations or other individuals in that District can endorse an applicant, if desired.
  - v. The District Supervisor or their designee should interview applicants and forward their recommendation to the Finance and General Government Group (FG3) Deputy Chief Administrative Officer (DCAO) or Designee.
  - vi. Recommended applicants should be interviewed by the DCAO or their designee from the FG3, CLERB Board Member(s) and a Human Resources Department designee.
  - vii. Applicant must pass a background check as is approved by the County of San Diego.

CLERB Board Member Nomination and Selection  
Ad Hoc Committee Revisions

- viii. Nomination of the applicant, pending the aforementioned steps, is made by the Chief Administrative Officer of the County of San Diego to the Board of Supervisors.

At Large Members shall be chosen from applicants from all Districts:

- i. Interview/selection by the FG3 DCAO or their designee, CLERB Board Member(s) and a designee of the Human Resources Department.
- ii. The applicant must successfully pass a background check as is required and approved by the County of San Diego.
- iii. Nomination of the applicant, pending the aforementioned steps, is made by the Chief Administrative Officer of the County of San Diego to the Board of Supervisors.

# **APPENDIX H**



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

**BACKGROUND:**

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

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

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

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

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

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

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

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

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



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

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

**POLICY RECOMMENDATION:**

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

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

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

# **APPENDIX I**



## Office of Inspector General

# OFFICER INVOLVED SHOOTING REVIEW JUSTIN PRESCOTT

December 29, 2016

Rick Braziel  
Inspector General

# Officer Involved Shooting Review

## Justin Prescott

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# Officer Involved Shooting Review

## Justin Prescott

### INTRODUCTION

The purpose of the Inspector General's investigation is to review tactics, departmental policies, equipment, and training with the intent to identify lessons learned and develop recommendations. The primary purpose of lessons learned is not to find fault in policy, training, equipment, or tactics, but to identify causes that allow for improvements that enhance the safety of the community and officers. It is important to note that this review was conducted with the benefit of hindsight and the knowledge of all concurrent events. The ability to review reports, photographs, video, and audio, allows for the critical review of the incident that is not available to officers and witnesses who are living in the moment.

A separate independent review was conducted by the Sacramento County District Attorney's Office addressing legal issues associated with filing of criminal actions. The District Attorney's review concluded the shooting death of Justin Prescott was lawful.<sup>1</sup>

### EXECUTIVE SUMMARY

On February 2, 2016, Justin Prescott spent over an hour inside the Walmart store cutting off tags and hiding merchandise on his person. His actions were witnessed by Walmart Asset Protection Associates and reported to the Sacramento County Sheriff's Department. When Prescott exited the store without paying at 6:48 p.m., he was stopped by Walmart Asset Protection Associates who attempted to bring him back inside the store. Prescott responded by holding a knife to his throat and threatened to harm himself.

Prescott fled but was confronted by two sergeants who attempted to arrest him for the theft. Despite two Taser firings and pepper spray, Prescott continued his attempt to escape by holding a knife to his throat and threatened to kill himself. He also stabbed himself in the chest. As the resistance moved to an area with extremely low light, Sergeant Gallaher, who was close to Prescott, could no longer see his hands or the knife. Observing that Prescott was irrational and likely under the influence, and fearing that Prescott could either stab him or escape and harm the public, Sergeant Gallagher fired two rounds from his handgun striking Prescott. Prescott was transported to UCD Medical center and pronounced deceased at 7:47 p.m.

The review of documents, evidence, video, audio, and policies surrounding the death of Justin Prescott developed into lessons learned and 12 recommendations.

### METHODOLOGY

The Inspector General, with cooperation from the Sacramento County Sheriff's Department, Sacramento County District Attorney's Crime Lab, and Sacramento County Coroner's Office, gathered, reviewed, and analyzed documentation from many sources to develop an understanding into the death of Justin Prescott. Policies, procedures, and training related to the

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<sup>1</sup> [http://www.sacda.org/files/8114/8061/3218/OIS -- Prescott.pdf](http://www.sacda.org/files/8114/8061/3218/OIS_-_Prescott.pdf)

## Officer Involved Shooting Review Justin Prescott

activities leading up to and including the shooting were reviewed and compared to accepted best practices in policing.

### Document, Evidence, and Policy Review

To assist in the review, information was collected from the following:

- Documents related to the shooting including witness statements, crime scene diagrams, Crime Lab reports, and Coroner's report.
- Photographs of the scene, dispatch audio, and video from Sheriff's Crime Scene Investigators.
- Review of videotaped interviews.
- Direct observation of the general area and shooting scene.
- Review of Sacramento County Sheriff's Department policies and applicable International Association of Chiefs of Police model policies.<sup>2</sup> Sheriff's policies include:
  - General Order 2/01 (Rev 6/13) Authorized Firearms and Ammunition
  - General Order 2/03 (Rev 5/08) Firearms Training and Qualification Special Weapon Training
  - General Order 2/05 (Rev 12/12) Use of Firearms
  - General Order 2/06 (Rev 10/07) Officer-Involved Shooting Incidents
  - General Order 2/07 (Rev 6/13) Handgun Tactical Light
  - General Order 2/08 (Rev 8/08) Use of Oleoresin Capsicum (O.C)
  - General Order 2/11 (Rev 12/13) and (Rev 4/16) Use of Force Policy
  - General Order 2/14 (Rev 12/12) Electronic Control Device
  - General Order 2/15 (New 10/04) Less Lethal Force Options
  - General Order 2/16 (New 1/06) Weapons Discharge Reporting Incidents
  - General Order 2/17 (Rev 3/13) Use of Force – Tactical Review Board
  - General Order 10/10 (New 9/07) In-Car Camera Systems

### Lessons Learned and Recommendations

The review of documents, evidence, video, and policies surrounding the death of Justin Prescott developed into lessons learned and 12 recommendations. Some of the recommendations were outside the scope of the shooting review, however they are important to the continued development of widely accepted policing practices within the Sacramento County Sheriff's Department.

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<sup>2</sup> <http://www.iacp.org/Model-Policies-for-Policing>

# Officer Involved Shooting Review

## Justin Prescott

### INCIDENT SUMMARY

During the early evening hours on February 2, 2016, Justin Prescott entered the Walmart at 10655 Folsom Boulevard in Rancho Cordova. He then spent over an hour walking through the store cutting tags off merchandise and concealing them on his person. During much of this time Walmart Asset Protection staff was observing Prescott. Store surveillance video also recorded Prescott's actions. At 6:44 p.m. Asset Protection called the Sheriff's Department reporting that a male white, approximately 28 years old and balding, was using a pocket knife to cut off merchandise tags.

At 6:48 p.m. Prescott left the store without paying for merchandise and shortly thereafter the agents stopped Prescott outside. Prescott initially denied stealing anything but eventually acknowledged that he took one item and handed it back to the Asset Protection Associate. As Asset Protection attempted to escort Prescott back into the store he backed away and pulled a red handled curved knife out of his pants pocket. He held the knife to his throat threatening to cut himself if the agents did not let him go. Prescott then fled westbound onto a driveway toward the rear of Safeway which is adjacent to Walmart.

Sergeants Patrick Gallagher and Mark Hatzenbuhler were working a supplemental contract job assigned to the Folsom Boulevard, Olsen Drive, and Zinfandel Drive business area. They were both in uniform and driving a marked Rancho Cordova Police SUV.<sup>3</sup> The sergeants were dispatched to the Walmart at 6:50 p.m. and upon arrival were told by Asset Protection Associates that Prescott had fled westbound behind the Safeway. Sergeant Gallagher was driving the patrol vehicle and drove west along the front of the Safeway and at the far west end he turned the patrol vehicle north toward the rear of the store. The west side of the store has perpendicular parking along the side of the business as well as the opposite side which is adjacent to a wood neighborhood fence. Lighting in this area is sufficient to see vehicles and people without additional lighting.

Shortly after turning north the sergeants saw Prescott walking toward them. When Sergeant Gallagher stopped the patrol vehicle Prescott ran southbound past them along the driver's side of the car. Sergeant Hatzenbuhler exited the vehicle and ran after Prescott while Sergeant Gallagher turned the vehicle around facing south toward the front of the store. As Sergeant Hatzenbuhler paced Prescott along the west side of the parking lot, parallel to the wood fence, he yelled at Prescott several times to drop his knife and show his hands. At one point Hatzenbuhler saw Prescott put an item to his neck and yell, "You guys keep chasing me. Fuck you guys, I'm gonna kill myself." In response Hatzenbuhler fired one Taser cartridge at Prescott with no effect.

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<sup>3</sup> The City of Rancho Cordova contracts with the Sacramento County Sheriff's Department for policing services.



## Officer Involved Shooting Review Justin Prescott

With both sergeants trying to contain Prescott and keep him away from the front parking lot of the Safeway, Prescott reversed direction and fled northbound toward the back of the store. Sergeant Gallagher saw Prescott holding a knife to his throat and ordered Prescott several times to drop the knife. When Prescott did not comply, Sergeant Gallagher fired one Taser cartridge which had very little effect. As Prescott continued toward the back of the store with the knife still to his throat Sergeant Hatzenbuhler sprayed Prescott in the face with pepper spray(OC) which had minimal affect. Prescott then began making motions like he was stabbing himself in the chest with the knife.

As Prescott and the sergeants moved around to the back of the store the available light became minimal. Light sources were limited to the back wall of the store. The patrol car which was parked along the west side of the store pointing at a south/west angle toward the wood fence provided no light to the rear of the store. Without an additional light source the lighting behind the store is not adequate to identify a person or determine a person's actions.<sup>4</sup> Only Hatzenbuhler had a flashlight, and while he was trying to reload his Taser, Gallagher could only see the upper half of Prescott's torso. Fearing that Prescott may charge him or escape and injure someone else, Sergeant Gallagher fired two rounds from his handgun striking Prescott in the right side of his neck and through the right forearm into the abdomen.

Medical aid was requested and Sacramento Metro Fire arrived at approx. 7:00 p.m. and transported Prescott to the U.C. Davis Medical Center. He was pronounced deceased at 7:47 p.m.

### PHYSICAL EVIDENCE

The following is a list of items discovered during the investigation, a summary of the Coroner's report, and toxicology tests. This list does not include other items collected such as additional personal property of Prescott or items recovered by Walmart personnel.

Evidence collected from the west side of Safeway included Wii Controller, red car controller, Taser wires, plastic pieces, and a glasses case containing drug paraphernalia. Evidence recovered from the rear of Safeway include Taser wires with darts, two shell casings, and medical first aid material.

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<sup>4</sup> The light at the back of the store was measured at 0.3 and 0.4 foot candles.

## Officer Involved Shooting Review Justin Prescott

### Knife Possessed by Prescott

The following knife was recovered from the scene:

1. Milwaukee Hawk Bill folding Knife - total length 7 ¼" <sup>5</sup>



### Weapons Used by Sergeants

The following weapons were used by the sergeants involved in the incident:

- Taser X26 - Sgts Gallagher and Hatzenbuhler each deployed one set of darts from their department issued Taser. Sergeant Hatzenbuhler's Taser recorded 3 seconds of activation, Gallagher's Taser recorded 6 seconds of activation.



- OC/Pepper Spray – Sgt Hatzenbuhler used OC spray
- Handgun - Glock 17 Gen 4 9mm pistol - Sgt Gallagher fired 2 rounds.



Figure 1 Glock 17 Gen 4 <sup>6</sup>

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<sup>5</sup> <https://www.milwaukeetool.com/hand-tools/utility-knives/48-22-1985>

<sup>6</sup> <http://www.guns.com/reviews/glock-glock-17-gen-4/>

# Officer Involved Shooting Review

## Justin Prescott

### Coroner's Report

The Sacramento County Coroner's Office conducted an autopsy of Justin Prescott and determined the cause of death to be gunshot wounds. Specifically, the report identified three gunshot entry wounds with the abdomen wound consistent with a re-entry wound:

1. Gunshot entry wound of the right neck and a projectile recovered from the left scapula.
2. Gunshot entry wound of the right forearm and exit the right forearm.
3. Gunshot entry wound of the right abdomen and a projectile recovered from the abdomen.

Based upon physical evidence it appears that the projectile that entered Prescott's abdomen first passed through his right forearm.

The autopsy report also identified self-inflicted superficial incised wounds of the face and chest.<sup>7</sup>

### Toxicology Results

Blood alcohol and toxicology tests were conducted by the Sacramento County District Attorney's Office Crime Lab.

The blood alcohol report lists blood alcohol at 0.070%.

The toxicology report lists the presence of the following:

Amphetamine            183 ng/mL

Methamphetamine    1545 ng/mL

Morphine                56 ng/mL

Normal concentrations in recreational use are 0.01 to 2.5 mg/L (median 0.6 mg/L = 600 ng/ml). Concentrations above this range will likely be associated with severe, possibly life threatening, toxicity.<sup>8</sup> The level of methamphetamine in Prescott's blood was near the upper end of toxicity at 1.545 mg/L. Medical journals warn that individuals with acute methamphetamine intoxication may be highly agitated and present a serious safety risk to themselves and others.<sup>9</sup>

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<sup>7</sup> An incised wound is caused by a cutting instrument.

<sup>8</sup> National Highway Traffic Safety Administration. *Drugs and Human Performance Fact sheets*. <https://one.nhtsa.gov/people/injury/research/job185drugs/methamphetamine.htm>

<sup>9</sup> Richards, John R., MD, FAAEM and Jeter (Jay) Pritchard Taylor, III, MD. *Methamphetamine Toxicity Treatment & Management*. <http://emedicine.medscape.com/article/820918-overview>

# Officer Involved Shooting Review

## Justin Prescott

### LESSONS LEARNED and RECOMMENDATIONS

The purpose of this review is not to simply focus on adherence to the policies and training related to the use of force, but to review the totality of the situation to identify lessons learned and possible opportunities that may reduce the likelihood of similar events.

Justin Prescott spent over an hour inside the Walmart store cutting off tags and hiding merchandise on his person. His actions were witnessed by Walmart Asset Protection Associates and reported to the Rancho Cordova Police Department which is a contract service provided by the Sacramento County Sheriff's Department. When Prescott exited the store without paying he was stopped by Walmart Asset Protection Associates who attempted to bring him back inside the store. Prescott responded by holding a knife to his throat and threatened to harm himself.

Prescott fled but was confronted by two sergeants who attempted to arrest him for the theft. Despite two Taser firings and pepper spray, Prescott continued his attempt to escape by holding a knife to his throat and threatened to kill himself. He also stabbed himself in the chest. As the resistance moved to an area with extremely low light, Sergeant Gallaher, who was close to Prescott, could no longer see his hands or the knife. Observing that Prescott was irrational and likely under the influence, and fearing that Prescott could either stab him or escape and harm the public, Sergeant Gallagher fired two rounds from his handgun.

Prescott's threat to kill himself combined with stabbing himself were indications of emotional crisis and/or being under the influence. While his actions clearly demonstrated that he was an immediate risk to harm himself, Prescott never threatened Walmart personnel or responding officers with the knife. His actions toward the officers were resistive and not assaultive and his actions could be characterized as suicidal.

Several factors contributed to the series of events between Prescott and the sergeants.

- Both sergeants were aware that Prescott was armed and exhibiting a knife.
- The sergeants both used less lethal options, Taser and pepper spray, in an attempt to arrest Prescott.
- The use of these less lethal options required the sergeants to get dangerously close to Prescott.
- Both the Taser and pepper spray were ineffective in gaining compliance.
- The sergeants had no other less lethal options available to them at the time of deployment.
- During the confrontation, Prescott attempted to flee to the back of Safeway which is an area with very low light.
- The low light environment created a visibility problem for Sergeant Gallagher who did not have a flashlight.

# Officer Involved Shooting Review

## Justin Prescott

### Use of Force

The 4th and 14th amendments of the U.S. Constitution provide the foundation for deadly use of force policies in the United States. Federal court guidelines stem from the benchmark 1985 decision of the U.S. Supreme Court in *Tennessee v. Garner*. This ruling held that the Tennessee statute that permitted police officers to use deadly force in arresting non-dangerous fleeing felons was unconstitutional. This ruling sanctioned the use of deadly force only to “protect the officer and others from what is reasonably believed to be a threat of death or serious bodily harm,” (or) “if it is necessary to prevent the escape of a fleeing violent felon whom the officer has probable cause to believe will pose a significant threat of serious physical injury to the officer or others.”<sup>10</sup>

A separate independent review was conducted by the Sacramento County District Attorney’s Office addressing legal issues associated with filing of criminal actions. The District Attorney’s review concluded the shooting death of Justin Prescott was lawful.<sup>11</sup>

### Value of Video and Audio

The Sheriff’s Department requires that officers record, both video and audio, all traffic stops, vehicle pursuits, crimes in progress, or any situation or event that the officer through training and experience believes should be recorded.<sup>12</sup> In situations when officers activate the vehicles emergency lights the video and audio recording features are automatically activated. In situations that do not involve the activation of vehicle lights the officers must manually activate the video and audio recording systems. This incident did not result in the use of emergency lights and unfortunately, the sergeants did not activate the video and audio recorders.

### Recommendations

1. The Sheriff’s Department should revise General Order 10/10 to:<sup>13</sup>
  - a. Require officers to wear and activate body worn microphones during all traffic stops, all vehicle pursuits, crimes in progress, and any situation or event that the officer through training and experience believes should be recorded.
  - b. Establish a review of all critical incidents to ensure officers comply with the requirements of General Order 10/10.
  - c. Establish a random audit of in-car camera video to ensure officers are complying with the provisions of General Order 10/10.
2. Continue the evaluation of body worn cameras with the goal of full field implementation.

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<sup>10</sup> [https://cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process\\_FINAL.pdf](https://cops.usdoj.gov/pdf/e10129513-Collaborative-Reform-Process_FINAL.pdf)

<sup>11</sup> [http://www.sacda.org/files/8114/8061/3218/OIS -- Prescott.pdf](http://www.sacda.org/files/8114/8061/3218/OIS--Prescott.pdf)

<sup>12</sup> Sheriff’s Department, County of Sacramento, General Order, In-Car Camera Systems, 10/10 (NEW 9/07)

<sup>13</sup> The Sheriff’s Department is aware of the recommendation and is working toward the revisions suggested.

# Officer Involved Shooting Review

## Justin Prescott

### Less Lethal and Necessary Equipment

When Sergeants Gallagher and Hatzenbuhler responded to the call they were aware that Prescott was armed with a knife. When the sergeants arrived, Prescott attempted to flee on foot and placed the knife to his throat threatening to kill himself.

The Sergeant's initial response was to attempt to contain Prescott using Taser and pepper spray. In doing so the Sergeants were forced to come within 15 feet of Prescott on several occasions. At times the distance between Prescott and the Sergeants was dangerously close.

### Recommendations

1. The Sheriff's Department should review research related to use of force as well as department data to determine frequency and effectiveness of less lethal weapons. If appropriate the results of the review should be used to modify training and less lethal devices available to personnel.
2. The Sheriff's Department should broadly deploy less lethal devices that provide a greater distance between officers and suspects. While Tasers and pepper spray are effective in reducing injuries to suspects and officers in resistive situations,<sup>14</sup> the use of either when a suspect is armed with a weapon often results in officers getting too close to the suspect. This may increase the threat to the officers, community, and suspect. Potential options should include impact munitions<sup>15</sup> as well as longer distance applications of chemical agents such as pepper balls.
3. The Sheriff's Department should reinforce through training, policy, and inspection the need to be equipped with the necessary safety equipment. Flashlights during darkness are a critical piece of safety equipment as observed in this incident.

### Decision Making Training

Law enforcement is a profession that requires officers to make decisions under rapidly changing conditions, with limited information, that potentially could result in serious injury or death. How officers respond in these situations is influenced by patterns formed through education, training, and experience.

### Recommendations

1. The Sheriff's Department should review training techniques to ensure frequent use of Tactical Decision Games<sup>16</sup> that challenge participants to successfully resolve problems through quick effective decision making.

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<sup>14</sup> <https://nij.gov/journals/267/pages/use-of-force.aspx>

<sup>15</sup> Less lethal impact munitions are designed to have a low probability of serious injury or death to people.

<sup>16</sup> Tactical Decision Games developed for the military have been used successfully in a variety of professions including law enforcement, fire service, and medicine.

## Officer Involved Shooting Review Justin Prescott

2. The Sheriff's Department should review training to ensure the following decisions are included in training sessions involving the use of force:
  - a. What crime was committed?
  - b. Who is the threat toward?
  - c. Who is the threat from?
  - d. Is the threat actual or potential?
  - e. What level of resistance is exhibited?
  - f. Is the subject suicidal or homicidal?

### General Policy Considerations

The following recommendations are not a reflection of the response to this incident but items discovered when comparing the Sheriff's Department policies to similar policies of other law enforcement agencies.

The IACP model policy for use of force specifies two circumstances in which the use of deadly force may be warranted. The first is "to protect officers or others from what is reasonably believed to be a threat of death or serious bodily harm." Secondly, police officers may use deadly force to prevent the escape of a fleeing violent felon who the officer has probable cause to believe poses a significant threat of death or serious physical injury to the officer or others.<sup>17</sup>

### Recommendations

1. The Sheriff's Department should consider revising General Order 2/11 and applicable section in General Order 2/05.
  - a. The term "reasonable" is used throughout the order. A concise definition in a single location would provide clarity and understanding. An example from IACP model policies reads; "In determining the necessity for and appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including but not limited to the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the community."
  - b. Section II A 2 c should require the officer to have probable cause that a violent felony was committed **and** that if not immediately apprehended reasonable cause to believe the suspect may cause death or great bodily injury. The current policy allows either circumstance which is not consistent with contemporary practices.
2. Most of the polices reviewed in this report have not been revised in over three years. The Department should establish a policy review cycle that requires all policies to reviewed and reissued or revised on a cycle no longer than three years.

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<sup>17</sup> <http://iacppolice.ebiz.uapps.net/PersonifyEbusiness/ModelPolicyList/MPUseofForce.aspx>

# Officer Involved Shooting Review Justin Prescott

## APPENDIX

### Timeline of Events<sup>18</sup>

TIME	ACTION
6:44:18 PM	Walmart Asset Protection Associates call Sacramento Sheriff's Department to report a male in the store cutting tags off merchandise with a knife.
6:48:55 PM	Asset Protection Associates report that the male walked out of the store with the merchandise
6:49:07 PM	Asset Protection Associates report that they are contacting the male.
6:50:19 PM	Units are dispatched
6:52:39 PM	Sergeant asked that the radio channel be cleared.
6:52:50 PM	Sergeant advised the Taser did not work and the subject was holding a knife to his throat.
6:52:48 PM	A sergeant radios that they are on the west side of Safeway against the fence. After a brief pause the sergeant gives a brief description of a male white or Hispanic wearing a blue flannel shirt, bald head, about 20 years old. Sergeant also reports, "The second Taser didn't work."
6:53:58 PM	Sergeant reports that the subject tried to stab himself in the chest and is non-compliant
6:54:36 PM	Sergeant reports shots fired with one down on the North side of Safeway in the back and requests Code-3 fire.
7:00:08 PM	Fire Department arrived

Table 1 Timeline

Because the dispatch log relies on data entry and demands that the dispatcher perform multiple tasks an additional review was completed of the audio tape to capture the time from when the sergeants requested the radio traffic cleared to when they reported shots fired. The between these actions was 2 minutes 5 seconds.

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<sup>18</sup> All times are approximate and based on Dispatch log entries.



Image of the Area



Figure 2 Aerial view of scene



Figure 3 Aerial view of scene - zoomed in