

BOARD MEMBERS

EILEEN DELANEY
Chair
MARYANNE PINTAR
Vice Chair
ROBERT SPRIGGS JR.
Secretary
DR. R. LEE BROWN
ANDREW HAYES
NADIA KEAN-AYUB
BONNIE KENK
ARIANA FEDERICO MONDRAGON
TIM WARE
GARY I. WILSON



EXECUTIVE OFFICER
PAUL R. PARKER III

County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 220, SAN DIEGO, CA 92101-2938
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775
www.sdcounty.ca.gov/clerb

January 26, 2023

CLERB Members
555 W. Beech Street
Suite #220
San Diego, CA 92101

RE: Overview of CLERB Rules and Regulations Draft Revision

CLERB Members—

Revisions to CLERB's Rules and Regulations (R&R) and to applicable provisions of the County Code of Administrative Ordinances will be proposed at a CLERB Special Meeting on January 31, 2023. True to our commitment to transparency within applicable law and dedication to continuous communication with a "No Surprises" mindset, the Special Meeting will be a forum to present a general overview of the proposed revisions to the community and CLERB members. After consideration of feedback and suggestions provided at the Special Meeting, the proposed changes will be forwarded to Labor Relations for meet-and-confer with and subsequent feedback from the Sheriff's Department, Probation Department, and applicable employee unions. After the meet-and-confer process, the updated revisions will be presented to CLERB for approval of the R&R. The CLERB-approved revisions as well as an ordinance amending the County Code of Administrative Ordinances will then be forwarded to the Board of Supervisors for final approval.

An overview of the proposed revisions is as follows:

- The addition of CLERB's Vision Statement.
- Expansion of CLERB's jurisdiction to include all employees of the San Diego Sheriff's Department (SDSD) and all employees of the Probation Department (Probation).
- Expansion of CLERB's jurisdiction to include any person providing medical care or mental health services in County detention facilities.
- Expansion of CLERB's jurisdiction to include audits, monitoring, and performing analyses of Sheriff's Department and Probation Department policies and patterns in practice.
- Expansion of CLERB's jurisdiction to allow for CLERB staff to have direct access to Sheriff's Department and Probation Department reporting systems for the purpose of auditing, monitoring, and conducting analyses of policies and patterns in practice.
- Defined "Audit," "Medical Service Provider," "Monitoring," and "Specified Incident."
- Changed "Subject Officer" to "Subject of Investigation."
- Eliminated the prohibition to investigate actions taken in respect to a Complaint received more than one year after the incident giving rise to the Complaint and, as such, eliminated incarceration and physical or mental incapacitation tolling exemptions under CLERB's R&R.

- Expanded the “Misconduct” definition to include “a deviation from standard of care, error, or omission related to medical care or mental health services” for “Medical Service Providers.”
- Added “including deaths determined to be due to natural causes” to codify current practice and implement a recommendation made in California State Auditor Report 2021-109.
- Added “the results of all audits, monitoring activities, and analyses or policies and patterns in practice” to the content of CLERB’s Annual Report.
- Section 6, entitled, “Cooperation and Coordination,” mirrors San Diego County Code of Administrative Ordinances (Admin. Code) Section 340.15, which mandates that “in the discharge of its duties, the Review Board shall receive complete and prompt cooperation from all officers and employees of the County. The Review Board and other public officers, including the Sheriff, the District Attorney, and the Grand Jury, shall coordinate their activities so that the other public officers and the Review Board can fully and properly perform their respective duties.”

NOTE: In California State Auditor Report 2021-109 it was recommended that CLERB modify its current agreement with the Sheriff’s Department and the labor organization to allow CLERB’s investigators to conduct independent interviews of Sheriff’s Department sworn staff. It is CLERB’s position that the emphasized phrase above should be sufficient to enforce the complete and prompt cooperation of all County employees afforded CLERB in the discharge of its duties but will continue to work with the Sheriff’s Department and Probation Department and applicable labor organizations to obtain such cooperation. CLERB will ensure the interviews are conducted pursuant to the protections provided by the Public Safety Officers Procedural Bill of Rights Act detailed in California Government Code Sections 3300-3313 and any other applicable law, including *Miranda v. Arizona*, 384 U.S. 436 (1966), *Lybarger v. City of Los Angeles* 40 Cal.3d 822 (1985), and *Garrity v. New Jersey*, 385 U.S. 493 (1967).

- “And contract service providers” was added after “all officers and employees of the County.”
- In the current R&R, “such cooperation shall include,” among other actions, “appearing at and answering questions during interviews (and) hearings.”
 - Added to “such cooperation:”
 - Responding in writing to CLERB policy recommendations.
 - Notifying CLERB of the death of any individual:
 - arising out of or in connection with actions of Sheriff’s Department or Probation Department employees, or Medical Service Providers,
 - in custody, or
 - on probation.
 - Notifying CLERB of the occurrence of Specified Incidents.
 - Providing access to Critical Incident Review Board reports, findings, and summaries.
- Mandated the prioritization of death cases above all other cases to codify current practice and implement a recommendation made in California State Auditor Report 2021-109.
- Added “responses to CLERB’s written or oral inquiries,” “review of relevant of medical records,” and “consultation with medical subject matter experts, as needed” to “Scope of Investigation.”
- Added a section entitled, “Procedural Rights and Protections,” that mandate CLERB provide to all Subjects of Investigations the rights and protections CLERB is required by law to provide to peace officers, including, without limitation, POBR (Peace Officers’ Procedural Bill of Rights).
- Removed “CLERB does not have jurisdiction because the Complaint was not timely filed” as a circumstance under which a Case may be summarily dismissed.

- As it pertains to Findings included in CLERB's Final Report:
 - changed "facts relating to any Case" to "allegations set forth in the Complaint or potential misconduct discovered during the course of CLERB's investigation of the Case," and
 - added "the Final Report for Specified Incident investigations shall include an overall conclusion as to the Case." This change will result in only a conclusion and no Findings for deaths or other specified incidents.
- Pertaining to Reconsideration of Final Report, added "or conclusions" as follows:
 - there is a reasonable likelihood the new evidence will alter the Findings, recommendations, or conclusions contained in the Final Report.
- Added that a Case may be re-opened for reconsideration by CLERB if the requirements of Government Code section 3304(g) are met, if applicable. As of this writing, those requirements are as follows:
 - (g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist:
 - (1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.
 - (2) One of the following conditions exist:
 - (A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.
 - (B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

If you have any questions about these proposed revisions prior to the Special Meeting, contact me at 619-301-9212.

I know your time is valuable and I cannot thank you enough for all that you do in service to the community.

Sincerely,



Paul R. Parker III
Executive Officer, CLERB

cc: Ebony Shelton, Deputy Chief Administrative Officer, Finance and General Government Group
Joan Bracci, Chief Operating Officer, Finance and General Government Group
Holly Porter, Deputy Chief Administrative Officer, Public Safety Group
Sheriff Kelly Martinez
SDSD Lieutenant Edward Greenawald
SDSD Sergeant Michael Tingley
Chief Probation Officer Tamika Nelson
Assistant Chief Probation Officer Denise Huffhines
Probation Division Chief Irene Lilly
Supervising Probation Officer Brandon Abriel
Supervising Probation Officer Brian Berry
Supervising Probation Officer Ross Lewin
Chief Deputy County Counsel Shiri Hoffman
Senior Deputy County Counsel Aurelia Razo
Duane E. Bennett, Esq.
CLERB Public Distribution List
CLERB Website