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February 3, 2023

Michael S. Tilden, CPA
Acting California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: CLERB One-Year Recommendation Implementation Update to California State Auditor's Report 2021-109

Dear Mr. Tilden:

The Citizens' Law Enforcement Review Board (CLERB) welcomes the opportunity and has authorized me to provide this one-year update to the implementation of recommendations to California State Auditor's (CSA) Report 2021-109.

CLERB's update to the specific recommendations are set forth below:

- **Recommendation One: Discuss and 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.**

San Diego County Code of Administrative Ordinances (Admin. Code) Section 340.15 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."

Throughout 2021 and 2022, the CLERB Executive Officer (EO), the former Deputy Sheriff's Association (DSA) President, DSA Counsel, and CLERB's Outside Counsel had several conversations pertaining to CLERB interviews of deputies. 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 and will continue to work with the Sheriff's Department and Probation Department and applicable labor organizations to obtain such cooperation.

As of this writing, the DSA will advise deputies that an interview may be requested by CLERB staff if CLERB staff believe an interview is necessary. If the deputy decides to participate in the interview, SDSA administration, CLERB staff, and the DSA 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). This agreement has not yet been formalized in writing but the DSA has agreed to do so.

Finally, it is my understanding that the new SDDS administration is currently assessing whether it will support CLERB interviews of SDDS personnel.

- **Recommendation Two: Develop a comprehensive training manual for its investigators that outlines standard procedures for investigations. The manual should include a specific section dedicated to investigations of in-custody deaths, including guidance for evaluating the circumstances leading up to an in-custody death, such as the decedent's mental health history and the appropriateness of the decedent's housing assignment.**

A comprehensive training manual containing the following topics has been completed:

- County structure
- CLERB historical perspective
- County Charter, Section 606
- County Administrative Code, Section 340
- CLERB Rules and Regulations
- Civil Service Commission Rule XV
- Case Law Including and impacting CLERB
- Public Safety Officer Procedural Bill of Rights (POBOR)
- Statutes Pertaining to Peace Officer Records
- San Diego County Grand Jury Reports Pertaining to CLERB
- Ralph M. Brown Act
- San Diego County Operational Plan Pertaining to CLERB
- CLERB's Internal Policies and Procedures

The training manual is being updated to include a specific section dedicated to investigations of in-custody deaths, to include an evaluation of the circumstances leading up to an in-custody death, and to include a review of the decedent's mental health history and the appropriateness of the decedent's housing assignment. It will also include evaluations of a trainee's performance and documentation as to his/her progress, or lack thereof. In addition to these critical topics, there will be documented instructions to evaluate the timeliness and thoroughness of welfare checks conducted on the decedent by deputies and assess whether deputies appropriately determined that a life-threatening emergency existed and responded accordingly. The updated training manual will be released on March 1, 2023.

- **Recommendation Three: Create policies and procedures to require its investigators to finish casework on in-custody death investigations within three months of receiving the homicide investigation file. These policies and procedures should also require investigators to attempt to independently verify any information they receive from the Sheriff's Department; to thoroughly review deputy statements and reports from the homicide investigation file; and to request interviews with relevant detentions staff and other witnesses in all instances where they identify discrepancies or missing information.**

On February 3, 2022, the EO incorporated all aspects of this recommendation into existing CLERB Policy #300.5, entitled, "Death Investigations."

- **Recommendation Four: CLERB should revise its rules and regulations to include prioritization criteria for investigating in-custody deaths above all other investigations.**

The EO and County Counsel have drafted verbiage to revise CLERB's Rules and Regulations (R&R) to prioritize death investigations over all other investigations. The EO is pursuing this change along with some other changes to the R&R and County Administrative Code (Code). Those additional changes require the assistance of Labor Relations and conferences with the affected labor associations. Once the labor relations process is complete, CLERB will review the proposed changes to the Code and R&R. If CLERB approves the changes, they will be brought before the Board of Supervisors for final approval. A summary of the proposed R&R changes, to include prioritization of in-custody deaths above all other investigations was presented to CLERB and the public on January 31, 2023. A final

draft of the proposed R&R changes will be presented to CLERB and the public on February 14, 2023. The final proposed changes will then be forwarded to Labor Relations for meet-and-confer purposes.

- **Recommendation Five: CLERB should revise its rules and regulations to include clarification that its investigations of in-custody deaths include those classified as natural deaths.**

The EO and County Counsel have drafted verbiage to revise the R&R to clarify that CLERB's jurisdiction over death investigations includes those deaths classified as natural deaths. The EO is pursuing this change along with some other changes to the R&R and Code. Those additional changes require the assistance of Labor Relations and conferences with the affected labor associations. Once the labor relations process is complete, CLERB will review the proposed changes to the Code and R&R. If CLERB approves the changes, they will be brought before the Board of Supervisors for final approval. A summary of the proposed R&R changes, to include clarification that its investigations of in-custody deaths include those classified as natural deaths was presented to CLERB and the public on January 31, 2023. A final draft of the proposed R&R changes will be presented to CLERB and the public on February 14, 2023. The final proposed changes will then be forwarded to Labor Relations for meet-and-confer purposes.

- **Recommendation Six: CLERB should perform an analysis of overall trends related to these deaths, including demographic information, and determine whether the trends suggest deficiencies in the Sheriff's Department's policies and procedures. It should also identify policy recommendations for improving the safety of individuals in the Sheriff's Department's custody. CLERB should include these trends and analysis in its annual reports starting with its 2021 report.**

The current EO has prioritized in-custody death investigations and the analysis of overall trends related to the deaths, to include demographic information. The current EO has committed to expanding the reporting to include an analysis of overall trends related to deaths, including demographic information and whether the trends suggest a deficiency in the SDSD's policies and procedures, in the 2021 Annual Report and all subsequent Annual and Semi-Annual Reports. In addition, all CLERB policy recommendations made in 2021 were included in the 2021 Annual Report, which was approved by CLERB in August 2022 and presented to the Board of Supervisors later that month.

Our commitment to continuing the proactivity started at the end of 2020 to improve upon the invaluable civilian oversight role we provide to the public, the SDSD, and the County is unwavering. The implementation of the CSA recommendations will assist with CLERB's provision of independent, timely, full, and thorough investigations into in-custody deaths which may, in turn, prevent future deaths.

Sincerely,



Paul R. Parker III
Executive Officer, CLERB

cc: CLERB Members
Shiri Hoffman, Chief Deputy County Counsel
Aurelia Razo, Senior Deputy County Counsel
Duane E. Bennett, Law Office of Duane E. Bennett