

BOARD MEMBERS

EILEEN DELANEY
Chair
MARYANNE PINTAR
Vice Chair
ROBERT SPRIGGS JR.
Secretary
DR. R. LEE BROWN
ANDREW HAYES
NADIA KEAN-AYUB
BONNIE KENK
ROBERT W. LINCOLN III
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

February 14, 2023

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

RE: Updated 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 were proposed at a CLERB Special Meeting on January 31, 2023, to allow for public comments and suggestions. On Thursday, February 9, 2023, versions of the R&Rs and applicable Code were disseminated. At the Special Meeting, I verbally detailed the rationale for each proposed revision. So that there is no confusion about what is being proposed, I think it is most appropriate to document the major proposed revisions and the rationales for them.

An overview of the proposed revisions is as follows:

- 1. The addition of CLERB’s Vision Statement.

CLERB adopted its Vision Statement on November 8, 2022. This revision incorporates the Vision Statement into the R&R.

- 2. 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).

This proposal stems from the content of an October 25, 2022, debate between candidates for Sheriff in which then-candidate Martinez stated, “I have said since last year, I think that all classifications should be in...I don’t think one classification should be the, you know, it should only be sworn. I think that any classification that works in our facilities that has, you know, power over what’s going on in our facilities or in patrol should be included.”

This expansion would allow CLERB to investigate complaints of misconduct against all personnel, as the actions of non-sworn personnel may negatively impact services provided to community members. This would allow for CLERB to identify any systemic issues or trends as it pertains to those services.

I am proposing the same expansion to the Probation Department for consistency in CLERB’s responsibilities and for the systemic issues and trends rationale listed above.

- 3. Expansion of CLERB’s jurisdiction to include any person providing medical care or mental health services in County detention facilities.

For two years this has been my primary focus, as CLERB is not privy to the “big picture” of in-custody deaths without the ability to investigate medical and mental health services provided to incarcerated persons.

4. Expansion of CLERB's jurisdiction to include audits, monitoring, and performing analyses of Sheriff's Department and Probation Department policies and patterns in practice.

“Audit/monitoring” is one of four civilian oversight models. CLERB is an “investigatory” model, meaning it conducts its own independent investigations. There exists a “review” model, in which the oversight entity simply reviews the internal investigations conducted by the law enforcement agency. The “audit/monitoring” model allows the oversight agency to review a wider range of law enforcement policies, practices, and procedures, the extent of which would be outlined in Code. The thought is that audit/monitoring models promote long-term, systemic change in a law enforcement agency. Finally, there are “hybrid” models, in which two or more models are combined. I am proposing the creating of a “hybrid” model that combines “investigatory” and “audit/monitoring” functions. Currently, CLERB has no ability to review or analyze the internal affairs processes, the outcome of implemented policies and procedures, a department’s uses of force, or traffic or pedestrian stop practices, to name a few.

5. 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.

To obtain the copious amounts of data required to conduct the analyses detailed above, it would be beneficial if CLERB was provided access to departments’ reporting systems. Any misuse by CLERB staff would be readily identifiable by the departments’ internal tracking methods.

6. Defined “Audit,” “Medical Service Provider,” “Monitoring,” and “Specified Incident.”

Except for “Specified Incident,” these terms are new and required defining. “Specified Incident” had not previously been defined.

7. Changed “Subject Officer” to “Subject of Investigation.”

If jurisdiction is expanded to include non-sworn personnel, “Subject Officer” would not apply to those non-sworn personnel who would be subjects of investigation.

8. 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.

Absent the CLERB's incarceration and physical or mental incapacitation tolling exemptions, CLERB's R&Rs prohibit it from investigating any complaint of misconduct filed over a year after the date of incident giving rise to the complaint. This self-imposed limitation is not consistent with the options available to the Sheriff's and Probation Departments and has resulted in CLERB summarily dismissing without investigation allegations of serious misconduct.

9. 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.”

Reviewing Medical Service Provider conduct must involve the ability for a subject matter expert to opine whether that provider deviated from the standard of care or made an error or omission that resulted in substandard care or subsequent harm.

10. Added “including deaths determined to be due to natural causes.”

This action will codify current practice and implement a recommendation made in California State Auditor Report 2021-109.

11. Added “the results of all audits, monitoring activities, and analyses or policies and patterns in practice” to the content of CLERB's Annual Report.

This action is self-explanatory.

12. 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."

As contractors provide critical services in both departments, specifically as it pertains to medical and mental health care, CLERB must receive complete and prompt cooperation from "contract service providers."

13. 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 within 60 days, or if a response cannot reasonably be provided within 60 days, providing a status report on such response.

While both Departments currently respond to CLERB's policy recommendations, there is no requirement that they continue doing so. There is also no requirement that the responses or a status report be provided within a specific time.

- 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,

Both Departments currently notify CLERB of deaths arising out of or in connection with actions of sworn members. This addition codifies current practice. This addition also mandates CLERB notification of deaths arising out of or in connection with actions of non-sworn members and Medical Service Providers.

- in custody, or

Both Departments currently notify CLERB of "in-custody" deaths. This addition codifies current practice.

- on probation.

CLERB is proposing this revision to identify any systemic issues or trends pertaining to the deaths of non-custodial probationers and to determine whether the deaths arose out of or were connected to actions of Probation Department employees.

- Notifying CLERB of the occurrence of Specified Incidents.

Both Departments currently notify CLERB of Specified Incidents. This addition codifies current practice.

- Providing access to Critical Incident Review Board reports, findings, and summaries.

This recommendation will not be pursued if the Sheriff's Department publicly provides these reports, findings, and summaries.

14. Mandated the prioritization of death cases above all other cases.

This action will codify current practice and implement a recommendation made in California State Auditor Report 2021-109.

15. 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."

This revision codifies the current practice of including "responses to CLERB's written or oral inquiries" in CLERB's scope of investigation. In anticipation of CLERB's jurisdiction over Medical Service Providers, "review of relevant of medical records," and "consultation with medical subject matter experts, as needed" must be considered in the scope of investigation.

16. Added a section entitled, "Procedural Rights and Protections."

This revision is to afford 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).

17. Removed "CLERB does not have jurisdiction because the Complaint was not timely filed" as a circumstance under which a Case may be summarily dismissed.

Refer to the rationale for item #8.

18. As it pertains to Findings included in CLERB's Final Report:

- changed "facts relating to any Case" to "facts relating to allegations set forth in the Complaint or potential misconduct discovered during the course of CLERB's investigation of the Case."

This revision codifies current practice.

19. As it pertains to Findings included in CLERB's Final Report:

- added "the Final Report for Specified Incident investigations shall include an overall conclusion as to the Case."

This change will result in only conclusions (in lieu of the current listed rationale) and no Findings for overarching death or other specified incident allegations. If potential misconduct is identified during CLERB's investigation into Specified Incidents (to include deaths), it will be listed as an allegation with the most appropriate finding and rationale.

20. 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 overall conclusions contained in the Final Report.

If item #19 is implemented, this change is required.

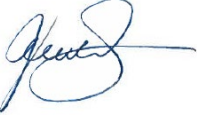
21. Added that a Case may be re-opened for reconsideration by CLERB if the requirements of Government Code section 3304(g) are met, if applicable.

The purpose of this revision is to codify current practice of identifying whether the requirements of POBR are met when determining whether a Final Report may be reopened.

If you have any questions about these proposed revisions prior to tonight's 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