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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its March 21, 2023, meeting held in person. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

### CLOSED SESSION

a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

**Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

### CASES FOR SUMMARY HEARING (19)

#### ALLEGATIONS, BOARD FINDINGS & RATIONALES

##### 21-088A/ALAN A.

1. Death Investigation – Alan A. died while in the custody of the San Diego County Probation Department (Probation) at the Kearny Mesa Juvenile Detention Facility on 09-08-21.

Board Finding: Not Sustained

Rationale: CLERB Rules and Regulations Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Subsection 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents, states, "CLERB shall have authority to review, investigate, and report on the following categories of incidents, regardless of whether a Complaint has been filed: The death of any individual arising out of or in connection with actions of peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department, arising out of the performance of official duties." CLERB was notified of this juvenile death via media reports and Probation records were requested via subpoena. On the morning of 09-08-21, Alan was found unresponsive in his cell at the Kearny Mesa Juvenile Detention Facility (Facility), by a Correctional Deputy Probation Officer (CDPO). According to the San Diego Medical Examiner's (ME) report, Alan's cause of death was acute fentanyl intoxication, and the manner of death was accident. It was noted that when paramedics were called to the Facility, upon arrival, Alan's death was confirmed

without medical intervention due to postmortem changes, and that drug paraphernalia was found in his cell. Through a homicide investigation conducted by the San Diego Sheriff's Department, it was determined how the narcotics entered the facility and subsequently were distributed to Alan. It should be noted, at the time of Alan's death, body scanning technology was not used at the Juvenile Detention Facilities. A review of Probation documents showed that staff did have a concern that illegal substances were present in the Facility where Alan was housed, and subsequently conducted room searches and "unit shakedowns." San Diego County Probation Department Institutional Services Policies (ISP) Section 5.5.7, Room/Bunk Areas Search, Subsection 5.5.7.2, Policy, stated, "An officer shall conduct a search of a youth's room/bunk area under the following circumstances: Whenever there is reason to believe that a youth may have contraband in his/her room/bunk area. On a random basis throughout the youth's stay. When a youth is released from the facility or transferred to another housing unit/dorm. At any time when the safety or security of the facility indicates a need for a search." Further, ISP Section 5.5.8, Unit/Dorm Shakedown, Subsection 5.5.8.2, Purpose, stated, "As part of the overall unit/dorm security plan, unannounced unit/dorm shakedowns shall be conducted on a random basis at least one (1) time per month. However, officers are authorized and encouraged to conduct unit/dorm shakedowns as often as deemed necessary, or whenever they have reasonable cause to suspect the existence of weapons or contraband." Given all of the information reviewed, it appeared staff responded appropriately when conducting room searches and unit/dorm shakedowns in response to concerns of contraband in the housing unit. The San Diego County Probation Department (Probation) has since implemented body scanning technology at both East Mesa Juvenile Detention Facility and the Youth Transition Campus. Also, it was reported by Probation that "Narcan" is now available within the Juvenile Detention Facilities. A review of Probation policies associated with body scanners now in place showed that Probation staff currently have the ability to direct a youth to complete a body scan if there was information known that the youth may be in possession of weapons, drugs, or contraband. Based on a review of all available evidence, including CCTV footage, staff statements regarding the incident, policy review and numerous Facility documents, it showed Probation failed to identify Alan was in medical distress prior to his death. See Rationale #2. However, it was unknown if Alan's death could have been prevented, even if Probation staff identified Alan was having a medical emergency and administered life-saving measures. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Probation failed to conduct appropriate "safety checks" around the time of Alan A.'s death.

Board Finding: Sustained

Rationale: Through the course of investigation, an allegation of "misconduct/procedure" was identified related to "Safety Checks" of youth in the custody of the Probation Department. Title 15 Minimum Standards for Juvenile Facilities, Article 3 Section 1328, stated, "The facility administrator shall develop and implement policy and procedures that provide for direct visual observation of youth at a minimum of every 15 minutes, at random or varied intervals during hours when youth are asleep or when youth are in their rooms, confined in holding cells or confined to their bed in a dormitory. Supervision is not replaced, but may be supplemented by, an audio/visual electronic surveillance system designed to detect overt, aggressive or assaultive behavior and to summon aid in emergencies. All safety checks shall be documented with the actual time the check is completed." Probation Department Institutional Services Policies (ISP) Section 5.6.8 – Safety Checks, further provided guidelines on minimum standards for safety checks of youth housed in Juvenile Hall. ISP Subsection 5.6.8.1 – Introduction, stated, "Direct visual observation of all youth shall occur at least every 15 minutes during hours when youth are asleep or otherwise confined to their rooms." ISP Subsection 5.6.8.3 – Failure to Act, continued, "Failure to act in accordance with Title 15 Section 1328 (regulations on Safety Checks) presents serious implications for youth safety and is a potential source of litigation for staff, the facility, the Probation Department and the County of San Diego. To avoid extensive liability and ensure the safety of youth entrusted to our care, staff shall be knowledgeable of and adhere to the policies established in this section." ISP Subsection 5.6.8.6 – Direct Observation, stated in part, "All Safety Checks shall consist of direct observation of youth by officers. Direct visual observation means through the eyes of an officer... Officers shall see each youth to assure that he/she is alive and not experiencing any observable trauma or engaged in any dangerous or forbidden activity before terminating the observation." ISP Subsection 5.6.8.9 – Procedures, stated in part,

“To successfully complete a safety observation it is imperative that staff see signs of life. Actual signs of life are seeing movement of the youth, including the rise and fall of the youth’s back and chest while breathing; or seeing the youth’s skin and hearing them breath/snore, or the youth responds to verbal engagement.” Based on a review of all the evidence, it was clear there was a disconnect between how staff conducted safety checks at the time of Alan’s death, and what was required by policy. It was impossible that “signs of life” of Alan in his room were observed by Probation staff during each safety check conducted, given Alan was found with postmortem changes on the morning of 09-08-21. Probation records showed numerous CDPOs conducted approximately 51 safety checks of youth in the housing unit Alan was assigned between approximately 9:00 pm on 09-07-21 and 7:00 am on 09-08-21. Ultimately, it was the responsibility of the Probation Department to ensure its employees were appropriately trained and executing their duties as required. The evidence supports the allegation and the act or conduct was not justified.

3. Misconduct/Procedure – CDPOs 4, 5, 7 and/or 8 failed to conduct appropriate “safety checks” around the time of Alan A.’s death.

Board Finding: Not Sustained

Rationale: Based on Probation records, CDPOs 4, 5, 7 and/or 8 were identified as having conducted safety checks of youth in the rooms between approximately 9:00 pm on 09-07-21 and 7:00 am on 09-08-21. However, given there appeared to be a disconnect between the policy of conducting safety checks, and the practice of conducting safety checks, and given the variance of staff statements on their knowledge and understanding of what constituted a safety check, the responsibility of “Misconduct” lies more appropriately with the Probation Department itself, rather than any one specific Probation Department employee. See Rationale #2. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – CDPOs 1, 3 and/or 6 failed to conduct appropriate “safety checks” around the time of Alan A.’s death.

Board Finding: Summary Dismissal

Rationale: Based on Probation records, CDPOs 1, 3 and/or 6 were also identified as having conducted safety checks of youth in the rooms between approximately 9:00 pm on 09-07-21 and 7:00 am on 09-08-21. During the course of this investigation, Probation advised that these individuals were no longer employed at Probation. Per CLERB Rules and Regulations Section 5.8, Termination, Resignation, or Retirement of Subject Officer, “CLERB shall have the discretion to continue or terminate an investigation, if, after a complaint is filed and before CLERB completes its investigation, the Subject Officer terminates employment with the Sheriff’s Department or the Probation Department. The Sheriff or the Chief Probation Officer or the Subject Officer shall notify CLERB when the Subject Officer’s employment is terminated.” Although CLERB lacks jurisdiction over this specific allegation, as referenced in Rationales #2-3, the responsibility of “Misconduct” lies more appropriately with the Probation Department itself, rather than any one specific Probation Department employee. The Review Board lacks jurisdiction.

5. Misconduct/Procedure – Probation staff did not notify the complainant of altercations involving Alan A. while in custody.

Board Finding: Summary Dismissal

Rationale: A complaint was filed on behalf of Brenda A., mother of Alan A. The complaint stated, “During his time at the facility, Alan was involved in fights with other juvenile detainees. On multiple occasions, those fights resulted in physical injury to Alan. But facility personnel never informed (Brenda A.) of Alan’s fighting or injuries.” For informational purposes, a review of current Probation policy revealed ISP Section 514, Use of Force, Subsection 514.6.2, Required Notification, which stated, “In addition to the notification of medical and mental health staff, the Division Chief or designee should ensure the parent or legal guardian of the youth is informed of any use of force...” The complaint was submitted to CLERB on 01-17-23, more than one year after the date of the incident giving rise to the complaint. CLERB Rules and Regulations Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Subsection 4.1.2, Complaints: Jurisdiction, speaks to the time constraints when receiving complaints. CLERB lacks

jurisdiction over this specific allegation due to the one-year time constraint. Given the lack of jurisdiction, CLERB was not entitled to Probation documents related to this specific allegation, and as such cannot make any determination if Alan was involved in physical altercations and if notifications were required. The Review Board lacks jurisdiction.

6. Misconduct/Medical – Medical staff did not notify the complainant of medications Alan A. was administered while in custody.

Board Finding: Summary Dismissal

Rationale: The complaint stated, “a nurse contacted (Brenda A.) and stated that Alan was not sleeping well and needed medication to sleep. (Brenda A.) asked which medication would be given, but the nurse did not provide that information.” For informational purposes, a review of current Probation policies associated with the allegation revealed ISP Section 8.2, Medical Records and Confidentiality, Subsection 8.2.4, Medical Records Are Confidential, which stated, “Only medical staff may provide and/or release medical information pertaining to a youth in a SDCJDF to a person outside the facility.” The complaint was submitted to CLERB on 01-17-23, more than one year after the date of the incident giving rise to the complaint. Additionally, CLERB Rules and Regulations Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Subsection 4.1, Complaints: Authority, stated, “...CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department...” The Review Board lacks jurisdiction as the complaint was untimely and medical staff reside outside CLERB’s authority.

7. Misconduct/Procedure – Probation staff did not notify the complainant that Alan A. received medical treatment while in custody.

Board Finding: Summary Dismissal

Rationale: The complaint stated, “Alan received emergency medical treatment at the facility, including treatment on September 5, 2021, for suspected fentanyl use. Neither Alan’s probation officer nor any other facility personnel ever informed (Brenda A.) of Alan’s emergency treatment.” For informational purposes, a review of current Probation policies associated with the allegation revealed ISP Subsection 8.5.12.6, Notification Policy, “In situations where emergency care at a hospital is indicated, the Watch Commander shall be immediately notified. The youth’s parents and the casework Probation Officer shall also be notified at the earliest opportunity. The Facility Watch Commander shall be responsible for the notifications.” Probation records refuted Alan was hospitalized prior to his death. The complaint was submitted to CLERB on 01-17-23, more than one year after the date of the incident giving rise to the complaint. CLERB Rules and Regulations Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Subsection 4.1.2, Complaints: Jurisdiction, speaks to the time constraints when receiving complaints. The Review Board lacks jurisdiction.

8. Misconduct/Procedure – Probation staff denied the complainant’s request to see Alan A. after he died.

Board Finding: Summary Dismissal

Rationale: The complaint stated, “The same day that (Brenda A.) learned that Alan had died, she requested to see Alan’s body. The Director of the facility declined that request.” A review of current Probation policies revealed ISP Section 8.12.2, Initial Actions on Discovery of Body, Subsection 8.12.2.1, Preserve the Scene, provided guidance. The policy stated, “The highest ranking Probation Officer at the site shall preserve the scene and direct other officers as the need arises. Once the immediate emergency is handled, the entire area shall be preserved. No one shall change, alter or move any object, item of clothing, furniture, etc., until cleared to do so by the senior officer.” Given the nature of a death investigation, and per the policy, an initial review of Probation denying Brenda A.’s request to see Alan while he was still at the Facility appeared within policy. The complaint also alleged that the “morgue” or funeral home still did not allow Brenda A. to see the body of Alan, however, as that allegation involves non-sworn members of Probation, and the complaint was untimely; CLERB lacks jurisdiction.

## **22-023/CHISM**

1. Misconduct/Procedure – Deputies 1 and 2 refused to obtain video evidence.

Board Finding: Unfounded

Rationale: The complainant stated a man came at him with an aluminum baseball bat in a Walmart parking lot. The complainant stated “Deputy 1 and 2 refused to check video like there superiors ordered them to do[sic].” According to the arrest report written by Deputy 1, Walmart provided video footage of the incident which was reviewed and detailed in the arrest report. Furthermore, CLERB was provided with the Walmart video surveillance, it was reviewed and corroborated the information provided in the arrest report. The evidence showed Walmart video footage was reviewed and that the alleged act or conduct did not occur.

2. Misconduct/Procedure- Deputies 1 and 2 refused to perform a citizen’s arrest.

Board Finding: Unfounded

Rationale: The complainant stated, Deputies 1 and 2 “would not honor my citizen’s arrest”. As per SDSO P&P 6.110 entitled “Private Person Arrest, if a private person has made an arrest or wants to make an arrest and requests that a deputy receive the arrestee, the deputy may accept custody if they are satisfied that the private person’s arrestee committed the offense, and the arrest is supported by probable cause. BWC of the incident was reviewed. In BWC Chism can be seen growing increasingly hostile and angry. He can be seen continually yelling profanities and racial slurs. At one point in the interaction with SDSO Deputies, Chism stated he wanted to press charges, but he quickly returned to yelling profanities and racial slurs. As per SDSO P&P 6.110 Procedure, “The deputy may decline to receive the private person arrestee if not supported by probable cause, without risk of state prosecution or liability for false arrest. If a private person insists on a physical arrest and the deputy determines there is not probable cause for that arrest, the deputy may complete a Case Report without the arrest element.” There was no evidence that Chism insisted on a citizen’s arrest and that there was any refusal on part by Deputies 1 or 2. The evidence showed the alleged act or conduct did not occur.

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## **22-050/CORTEZ**

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-5 and 7-9 used force on Sonny Cortez while housed at the San Diego Central Jail (SDCJ) on 03-23-22.

Board Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. According to SDSO documentation, on 03-24-22, while Sonny Cortez was detained at SDCJ, a Tactical Team was assembled and extracted Cortez out of a safety cell and placed him into his new assigned housing. A day prior, Cortez had assaulted deputies when they attempted to escort him to his assigned housing, which led to a medical evaluation by a Qualified Mental Health Provider (QMHP) and Cortez being placed in a safety cell. A safety cell is temporary housing for incarcerated persons (I/P’s) that are assaultive. The next day, a QMHP cleared Cortez from the safety cell and recommended he be placed in Enhanced Observation Housing (EOH), where according to policy, I/Ps are housed to be assessed for permanent housing. Sworn staff spoke with Cortez on several occasions and attempted to gain his compliance, but he refused to cooperate with deputies and threatened to “eat them.” Given Cortez’s assaultive nature and threats, a Tactical Team was called to extract Cortez from the safety cell. The Tactical Team provided him opportunity to cooperate, but Cortez refused. The Tactical Team proceeded and discharged a Simulated Munitions Shotgun (SMS) two times, which was loaded with 12-gauge bean bag ammunition. Cortez was struck in his lower abdomen area and his inner thigh. Cortez then complied with deputy commands and laid face down on the floor. Cortez was evaluated by jail medical staff and transported to a hospital for further treatment. Given Cortez’ assaultive nature, active threats and lack of compliance, the use of force was reasonable and necessary to subdue him. Deputies also provided confidential statements during the course of CLERB’s investigation that was considered in arriving at the recommended finding. The evidence showed the conduct that

occurred was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1, 2, 4, 7, 8 and 9 “chained” Sonny Cortez to a gurney.

Board Finding: Action Justified

Rationale: See Rationale #1. Complainant Francesco Cortez alleged “excessive force” was utilized during Sonny Cortez’s transport. Sonny Cortez reported to CLERB when he was transported on a medical gurney at SDCJ after he was extracted from his cell, “the chains were on too tight.” Video footage showed and deputy reports stated that after deputies used force towards Cortez, he was handcuffed, placed in leg restraints, and placed onto a gurney. Deputies then used soft restraints to secure him (belt-type restraint) as medical staff evaluated Cortez and treated his wounds. Cortez was then immobilized in a WRAP, which is a restraint device utilized to secure an I/P exhibiting violent behaviors. Cortez was not “chained,” but secured in accordance with policy. Video footage showed that Cortez asked deputies to uncuff him and loosen the restraint(s), but he was kept on the gurney for transport to the hospital. In addition, Deputy 8 was assigned as the Safety Officer, to ensure Cortez was stable. The actions taken by deputies to ensure that he was properly restrained onto the gurney were in accordance with SDS D P&P, Section I.93 Restraint Devices and DSB P&P M.32 Use of Medical Gurney. Note that it is within the job duties of a deputy to secure I/Ps onto a medical gurney, as the act of securing a person in accordance with policy is not a use of force. The evidence showed the conduct that occurred was lawful, justified and proper.

3. Excessive Force – Deputy 5 used force on Sonny Cortez at UCSD Medical Center.

Board Finding: Action Justified

Rationale: Complainant Francesco Cortez alleged “excessive force” while Sonny Cortez was at UCSD Hospital on 03-28-22. Sonny Cortez stated that while he was being treated at UCSD Medical Center he tried to escape, so deputies “slammed” him down and placed him back onto a bed. Cortez said he tried to escape because he heard voices that instructed him to do so. According to SDS D documentation, Deputies 5 and 6 were assigned as Hospital Guards for Cortez. Deputy 5 escorted Cortez to a restroom and when Cortez exited the restroom, he head-butted the deputy. Deputy 5 delivered a closed fist strike to Cortez’s face and commanded him to get on the ground. Deputies reported that Cortez did not comply and attempted to escape the hospital room, so both deputies used their body weight to take him down to the ground. The force used was in accordance with SDS D P&P Addendum F, Use of Force Guidelines. There was no body worn camera (BWC) or hospital surveillance available for this incident. Hospital medical records were reviewed and corroborated deputy reports. Given the totality of circumstances, the force utilized by deputies was necessary to prevent possible escape and further assault on the deputies. The evidence showed the conduct that occurred was lawful, justified and proper.

4. Excessive Force – Deputy 6 used force on Sonny Cortez at UCSD Medical Center.

Board Finding: Summary Dismissal

Rationale: See Rationale #3. During the course of CLERB’s investigation, the San Diego Sheriff’s Department verified that Deputy 6 was no longer employed by them as of 06-19-22. In accordance with CLERB Rules and Regulations, Section 4.1: Authority, and Section 15: Summary Dismissal, CLERB does not have jurisdiction to investigate the actions of Deputy 6.

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## **22-089/WOODS AND 22-118/ALVARADO (COMBINED IN ONE REPORT)**

1. Misconduct/Harassment – Deputy 1 requested a pat down, strip search, and x-ray on Woods and Alvarado.

Board Finding: Action Justified

Rationale: Olivia Alvarado and Cassandra Woods both submitted complaints to CLERB and stated they were patted down, strip searched, and then x-rayed. Alvarado stated, “I felt that like because I am an inmate, she had a complete lack of disregard for my mental well-being as well as the damage she caused

me in taking her power as deputy and abusing it". Furthermore, Alvarado stated "I feel violated and disrespected, I am not in the wrong in feeling this way". Woods stated, "all this was straight out of harassment and abuse of power. It should be illegal for deputies to have the power of a persons body and make them get completely naked." Furthermore, both Woods and Alvarado stated in their complaints that Alvarado handed Woods a card during dinner time. As per I.52 entitled "Strip and Pat down searches of incarcerated persons", Incarcerated persons may be strip searched any time there is reasonable suspicion to believe they may be concealing contraband or weapons. Furthermore, SDSD records showed the week prior to the incident contraband was discovered on Alvarado. CLERB is aware the SDSD has taken some steps to aid in the prevention of illegal drugs entering the jails. Deputy 1 provided confidential information during CLERB's investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure –Deputy 2 patted down, strip searched, and x-rayed Woods and/or Alvarado.

Board Finding: Action Justified

Rationale: Both Woods and Alvarado wrote complaints to CLERB about the pat down, strip search, and x-ray. Both Woods and Alvarado identified Deputy 2 as being present but did not have a complaint against her. As per I.52 entitled "Strip and Pat down searches of incarcerated persons", Incarcerated persons may be strip searched any time there is reasonable suspicion to believe they may be concealing contraband or weapons. Furthermore, SDSD records showed the week prior to the incident contraband was discovered on Alvarado. CLERB noticed Deputy 2 of a CLERB Investigation even though the complaint was not against her. Deputy 2 provided confidential information during CLERB's investigation that was considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The pat down, strip search, and x-ray were performed in accordance with policy.

3. Excessive Force – Deputy 1 "grabbed" Alvarado by her sweatshirt and was "extremely rough" and "aggressive" performing a pat down search.

Board Finding: Not Sustained

Rationale: Alvarado stated, "The deputy then patted me down and found nothing, which she was extremely rough and aggressive in doing so". According to Addendum F definitions, arm guidance and controlling force are not uses of force. Arm guidance is defined as the light touching of a person's arm or elbow used to direct them to a new location. Arm guidance with no resistance from the subject being guided would not be considered a use of force and consequently not reportable. Furthermore, controlling force is the minimum amount of force needed to control a subject who will not submit to verbal commands. This level of force involves application of control/pain which does not result in injury. CLERB reviewed jail surveillance in the dining room on the date of the incident. Due to camera quality of footage, and camera angles, there was insufficient evidence to prove or disprove the allegation.

4. Misconduct/Procedure – An unidentified deputy placed Alvarado in her cell on "lock down".

Board Finding: Not Sustained

Rationale: Alvarado stated, "I was locked down for the remainder of the day until that evening to get a pelvic x-ray". SDSD DSB P&P O.1 entitled Disciplinary Action states, Disciplinary Lockdown should not be confused with "security lockdown," a management procedure of locking down incarcerated people when conditions are such that the safety of incarcerated population and/or staff is at risk. There was insufficient evidence to determine if Alvarado was put on "lock down". CLERB collected several deputy statements during the investigations that were considered at arriving in the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. Due to inconsistencies and lack of documentation, there was insufficient evidence to prove or disprove this allegation.

5. Misconduct/Procedure - Unidentified deputies searched Woods' cell and damaged her personal items.

Board Finding: Action Justified

Rationale: Woods stated, "they searched my cell and damaged \$30 worth of commissary and personal items". As per DSB P&P Q.63 entitled "Lost Incarcerated Person Money or Property", states "whenever an incarcerated person claims to be missing personal property (including money or other valuables) or module property (such as commissary or hygiene products), the watch commander shall be notified. If the claim regarding personal property is not immediately resolved, a crime report shall be completed. The grievance process should be followed for claims of missing module property (to include commissary and hygiene products)." The policy does not dictate the process for damaged property. SDSA records produced no results for any Claims for Lost or Damaged Personal Property (RM-122) forms submitted by Woods. Furthermore, in a telephonic interview with Woods on 02-27-23, she stated the property that was damaged was bags of coffee that were spilled on her legal documents and notebooks. CLERB collected several deputy statements during the investigations that were considered at arriving in the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. Due to the potential of drugs being hidden in the Coffee bags, the evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure – SDSA did not respond to Woods' grievances within a reasonable amount of time.

Board Finding: Not Sustained

Rationale: Woods stated, "I grieved it and I got no response". Furthermore, Woods stated, "they responded one month after I submitted it! With no explanation and – they only have 7-10 days only. My other grievances are M.I.A." Woods submitted a two-page grievance with her complaint. The grievance was not pertaining to the incident, but rather facility lockdowns due to staffing shortages. The grievance Woods submitted pre-dated the incident by two days. The grievance showed a date of 07-12-22 next to the "inmate signature" field. SDSA records indicated it was received on 08-12-22 and responded to on 08-13-22. In a telephonic interview with Woods on 02-27-23, she stated SDSA deputies return grievances if the date is incorrect and would not have accepted the grievance with an inaccurate date. SDSA DSB P&P N.1 titled "Grievance Procedure", states "the deputy or staff member who responds to the grievance shall determine if the grievance alleges the incarcerated person's health or safety is being threatened by a condition of confinement, or a condition of confinement has prevented the incarcerated person's effective communication/participation in any court or administrative hearing. If any of the above are alleged, check the corresponding box on the J-22 form and respond within the time frames determined in the policy." The timeframes are outlined in the policy align with the information on the back of the grievance form and dictate a 7-day response time for first level supervisor, and an additional 10 days for each appeal. As per California Code Regulations Title 15 § 1073 - Inmate Grievance Procedure, grievance policies and procedures shall include a provision for a response within a reasonable time limit. There was no way to determine if the grievance was correctly dated by the complainant. If the grievance was correctly dated by the complainant, there was insufficient evidence to determine the apparent cause for delay in response. There was insufficient evidence to either prove or disprove the allegation.

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**22-097/ROBINSON**

1. Misconduct/Procedure – Unidentified deputies refused to assist Robinson in retrieving her property.

Board Finding: Unfounded

Rationale: Kirby Robinson stated, "San Marcos police department refuses to allow me to obtain my property which I'm legally allowed to go get the judge stated I'm allowed to get my property but yet every single time I've contacted the San Marcos police department they refuse." According to CLERB's Sheriff liaison, citizens can request a Civil Standby to retrieve property. They must have a court order that shows they are permitted to retrieve their property and they must present that order at the time of the request. However, if at the time of the request deputies are not available they will have to return at another time.



On 06-16-22, an order was issued by the San Diego Superior Court authorizing Robinson a one time preserve the peace visit, to retrieve her personal belongings, accompanied by law enforcement. Request for records from the SDSA did not produce any evidence indicating that Robinson appeared in person at the Sheriff substation, or that she made phone calls to the station, for the purpose of requesting assistance to retrieve her property, as she alleged. Robinson failed to identify the involved personnel or provide evidence to corroborate her allegations. The alleged misconduct is unfounded.

2. Misconduct/Procedure – Unidentified deputies failed to provide check(s) on Robinson’s residence.

Board Finding: Unfounded

Rationale: Robinson stated, “San Marcos police department has also refused us a check in where they are legally obligated to do a check up on the residence if requested to make sure nothing has happened to our property and possessions yet that hasn’t happened and all of this was stated by a judge that is to happen yet it hasn’t.” Robinson failed to identify the involved personnel or provide evidence to corroborate her allegations. See Rationale #1.

3. Misconduct/Discourtesy – SDSA personnel “hung-up” on Robinson.

Board Finding: Unfounded

Rationale: Robinson stated, “San Marcos police department hung up on me multiple times.” Robinson failed to identify the involved personnel or provide evidence to corroborate her allegations. See Rationale #1.

4. Misconduct/Procedure – SDSA personnel refused to contact a supervisor per Robinson’s request.

Board Finding: Unfounded

Rationale: Robinson stated, “San Marcos station personnel refused to connect me to their supervisors.” Robinson failed to identify the involved personnel or provide evidence to corroborate her allegations. See Rationale #1.

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## **22-105/SANCHEZ**

1. Misconduct/Procedure – Deputy 2 failed to arrest the suspects who shot Aurelio Sanchez.

Board Finding: Unfounded

Rationale: The complainant, Aurelio Sanchez reported that Deputy 2 “did not take his case seriously” and when he asked her why she hadn’t arrested the suspects, she responded she has three years to make an arrest. Sanchez also stated that when the Sheriff’s Department (SDSA) arrived, “They were more worried about the (stolen) motorcycle instead of looking for the people that shot him.” On 04-25-22, Sanchez was at the house of an acquaintance where he engaged in an argument with Suspect 1 who then reportedly shot him and then drove off with a man, Suspect 2. Sanchez contacted Sheriff dispatch and reported the incident. Evidence showed that when deputies arrived on scene they questioned Sanchez about the shooting, but he only provided a suspect’s name. According to SDSA reports and Body Worn Camera (BWC), Suspect 2 returned to the scene of the crime and was arrested. SDSA documentation showed that Suspect 2 was released from custody on 04-28-22 because the District Attorney’s (DA) Office did not file charges. It is notable that the Sheriff’s Department and the DA’s office are separate entities and not every person that is arrested and/or booked on criminal charges by law enforcement will be prosecuted. Ultimately, it is up to the DA to determine whether they pursue a case and file charges. An arrest warrant was placed for Suspect 1, as search efforts were not successful. On 09-12-22, Deputy 2 was alerted that Suspect 1 was arrested and booked on an unrelated warrant. Deputy 2 proceeded to arrest Suspect 1 with charges of Assault with a Firearm and Conspiracy to Commit Crime. An SDSA detective assisted and interviewed Suspect 1 about the shooting. According to SDSA documentation, on 09-14-22 Suspect 1 made bail and was released from custody. Suspect 1 has upcoming court dates regarding these charges. SDSA documentation showed that both suspects involved in the shooting were apprehended by SDSA.

Evidence showed that the alleged acts or conduct did not occur.

2. Misconduct/Procedure – Deputies 1 and 2 did not investigate Sanchez’s case.

Board Finding: Unfounded

Rationale: See Rationale #1. Sanchez stated that deputies arrived at the hospital and questioned him about the (stolen) motorcycle and did not ask him about the shooting. According to SDSD documents, Deputy 1 responded to the shooting and was instructed to follow Sanchez as paramedics transported him to the hospital. Deputy 1 asked Sanchez what he wanted deputies to do with his motorcycle and if he had any other personal items at the scene. Deputy 1 was later informed that Sanchez was in possession of a stolen motorcycle, so he read Sanchez his Miranda Rights, interviewed him, spoke to the motorcycle owner and determined he stole the motorcycle. Deputy 1 was within his job duties to investigate the motorcycle theft. There were other deputies that questioned Sanchez about the shooting at the scene and at the hospital. Deputy 2 responded to the scene and interviewed witnesses, searched the area and apprehended a suspect. Ultimately, both suspects were arrested and charged accordingly. All evidence showed that Deputies 1 and 2 investigated the case and there was no evidence of misconduct. The evidence showed that the alleged act or conduct did not occur.

3. Misconduct/Discourtesy – Deputy 2 treated Sanchez like “trash.”

Board Finding: Not Sustained

Rationale: See Rationale #1. Sanchez stated that a detective was not taking his case “seriously” and treated him like “trash.” He mentioned when he asked the detective why she had not arrested the suspects who shot him, that she responded she had three years to arrest them. Chapter 2 of the California Penal Codes titled Time of Commencing Criminal Actions, states in Penal Code 801. Imprisonment in State Prison, Felony that prosecution for an offense punishable by imprisonment in the state prison shall be commenced within three years after commission of the offense. (Statute of limitations to arrest for a felony charge is three years.) Although there was no evidence of any misconduct and/or inappropriate behavior towards Sanchez, the complainant did not provide more information as to what Deputy 2 allegedly did and/or said to him that indicated she treated him like “trash.” CLERB attempted to reach out to the complainant, but his phone number on file was no longer valid and he has not responded to electronic correspondence to date. There was insufficient evidence to either prove or disprove the allegation.

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## 22-108/MONTIEL

1. False Arrest – Deputy 1 arrested Saul Montiel.

Board Finding: Action Justified

Rationale: According to Saul Montiel, “On 02-15-22, his stepfather called 911 and requested Saul be taking [sic] to a psychiatric hospital as he was having a psychiatric episode. Saul alleged that instead of taking him to the hospital, deputies arrested him and took him to jail, and he was charged with three felonies.” SDSD records showed Montiel was arrested for criminal threats and exhibiting a deadly weapon. Body Worn Camera (BWC) evidence was reviewed and supported arrest documentation provided by Deputy 1. As per SDSD P&P 6.32 entitled “Mentally Ill Persons,” when a subject has been arrested for a crime and the arresting deputy determines a 72-hour hold evaluation is needed, detention facilities require Emergency Psychiatric Unit (EPU) staff assess the arrestee prior to being booked. Evaluation at any other mental health facility will not be adequate as detention facilities cannot follow orders written outside of the EPU. Deputy 1 did not indicate a 72-hour hold was needed. As per the Psychiatric Emergency Response Team (PERT) Operational Manual, “any person who meets the requirements of a 5150 and has committed a bookable misdemeanor or any felony, or has any outstanding felony warrants, or has any high-grade misdemeanor warrants is usually not appropriate for referral or detention under section 5150 WIC. These cases will be handled on a case-by-case basis”. Furthermore, BWC footage showed Deputy 1 stated, “he did commit a crime so he is going to be going to jail and he will be evaluated at the jail for his mental illness.” Montiel was arrested for Penal Code 417 (A)- brandishing a weapon and Penal Code 422 (A) –

criminal threats, which was noted as a felony. The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

2. Misconduct/Medical – Montiel was not treated for his “psychiatric episode”.

Board Finding: Summary Dismissal

Rationale: According to Montiel, “On 02-15-22, his stepfather called 911 and requested Saul be taking [sic] to a psychiatric hospital as he was having a psychiatric episode. Saul alleged that instead of taking him to the hospital, deputies arrested him and took him to jail, and he was charged with three felonies.” SDSO DSB P&P M.9 entitled “Receiving Screening” in effect at the time of incident stated, “All arrestees presented by arresting agencies shall be medically screened prior to acceptance for booking at a Sheriff’s detention facility.” Montiel’s jail medical records indicated Montiel was marked as “fit to continue booking process”. Medical decisions such as fit for booking status are made by medical staff, over which CLERB has no jurisdiction. The Review Board lacks jurisdiction.

3. False Reporting – Deputy 2 recovered false evidence.

Board Finding: Unfounded

Rationale: Farzad Dilmaghanian stated, “the officer walked toward the kitchen sink picked up a knife that was in the plate drainer showed it to me and asked me “did he threaten you with this knife?” I replied “no, he threatened me verbally I didn’t see a knife in his hand”. The officer took the knife with him”. BWC evidence showed Dilmaghanian told deputies Montiel came at him “with a knife on the kitchen right there”. SDSO Deputies asked which knife and Dilmaghanian went to the kitchen and pointed to a kitchen knife. The deputies advised Dilmaghanian not to touch the knife and removed it as evidence. Furthermore, the recorded 911 call showed the dispatcher asked Dilmaghanian if Montiel held up a knife to him, he stated “yes, I hid in the bedroom”. Dilmaghanian also indicated it was a kitchen knife on the recorded 911 call. The evidence showed that the alleged act or conduct did not occur.

4. Misconduct/Procedure – Deputy 1 failed to notify Montiel of his “Miranda rights.”

Board Finding: Unfounded

Rationale: Montiel stated, “I was arrested and my Miranda rights nor the reason for me being arrested were stated to me “. As per California Police Officers Legal Sourcebook, Summary of Miranda (Fifth) and Sixth Amendment rules, no Miranda warnings are necessary unless both “custody” and “interrogation” exist at the same time. BWC footage showed Deputy 1 read Montiel his Miranda warnings. Furthermore, Montiel participated in the questioning by Deputy 1 following the reading of his warnings. The evidence showed that the alleged act or conduct did not occur.

5. Misconduct/Procedure – Deputy 1 failed to inform Montiel the reason(s) for his arrest.

Board Finding: Unfounded

Rationale: Montiel stated, “I was arrested and my Miranda rights nor the reason for me being arrested were stated to me.” BWC footage showed Deputy 1 informed Montiel of the reasons for his arrest. There was no indication that Montiel did not understand or comprehend the information that was relayed by Deputy 1. The evidence showed that the alleged act or conduct did not occur.

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## **22-109/BANDY**

1. Misconduct/Discourtesy – Deputy 2 used profanity while serving a temporary restraining order.

Board Finding: Unfounded

Rationale: The complainant, Don Bandy, submitted a complaint in which he identified Deputy 2 as the subject officer of the complaint. Through the course of investigation, it was determined the subject officer was Deputy 1. The evidence showed Deputy 2 was not on scene or involved in this incident and the alleged

conduct did not occur. The evidence showed the act or conduct did not occur.

2. Misconduct/Procedure – Deputy 2 barred Bandy from entering his home.

Board Finding: Unfounded

Rationale: See Rationale 1.

3. Misconduct/Discourtesy – Deputy 2 was “hostile and aggressive” to Bandy.

Board Finding: Unfounded

Rationale: See Rationale 1.

4. Misconduct/Procedure – Deputy 2 “instructed” Bandy to leave his house, while his 10-year-old daughter was home alone.

Board Finding: Unfounded

Rationale: See Rationale 1.

5. Misconduct/Discourtesy – Deputy 1 used profanity while serving a temporary restraining order and removal order.

Board Finding: Unfounded

Rationale: The complainant, Don Bandy, stated, “the San Diego Sheriff’s that issued me the temporary restraining order were hostile and violated my rights. They told me they were going to “blow the fucking door off” and I was pulled from the house with nothing, but the clothes on my back and no shoes.” As per BWC footage, Deputy 1 stated “we can do it the easy way or the hard way, I much rather you cooperate. Right now, let me explain this. This is civil, it’s not criminal. If you refuse, it’s going to become criminal, and I am going to get OPD and we are going to tear this door off.” Deputy 1 also later stated, “I am going to tell you one more time, open up that darn god door.” As per SDSO P&P 2.22 entitled Courtesy, “Employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Coarse, profane, or violent language is generally prohibited. Employees shall not use insolent language or gestures in the performance of his or her duties.” Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence showed the alleged act or conduct did not occur.

6. Misconduct/Discourtesy – Deputy 1 was “hostile and aggressive” to Bandy.

Board Finding: Sustained

Rationale: Bandy stated the officers humiliated him in front of his 10-year-old daughter. Bandy also stated the deputy that issued the temporary restraining order was hostile and he was met with sheer hostility and aggression. Body Worn Camera (BWC) footage suggested Bandy was confused and extremely upset during the enforcement of the Temporary Restraining Order (TRO) and Removal Order. Deputy 1 made several comments towards Bandy that appeared to escalate the situation. Deputy 1 stated, “when you start getting resistant with us, we are going to amp it up”. Bandy stated, “I am not resisting”. Deputy 1 also made several other comments to Bandy during the encounter such as “you’re out of control” and “don’t make a lot of drama”. The BWC evidence suggested Bandy was extremely confused and upset but appeared to be willing to comply. Deputy 1 told Bandy that he was “trained to calm people down and de-escalate the situation” and that Bandy was “kind of escalating it”. There was no apparent evidence in the BWC to indicate Bandy was “out of control”, causing “drama”, intentionally non-compliant, or dangerous. Deputy 1 continually motioned and mentioned the interaction was “on camera” and the judge would see the footage and see the drama on Bandy and how he was out of control. As per SDSO P&P 2.22 entitled Courtesy, “Employees shall be courteous to the public and fellow employees. They shall be tactful in the

performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Coarse, profane, or violent language is generally prohibited. Employees shall not use insolent language or gestures in the performance of his or her duties.” Furthermore, SDS D P&P 2.4 entitled Unbecoming Conduct, states “Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department. Unbecoming conduct shall include that which tends to bring this Department into disrepute or reflects discredit upon the employee as a member of this Department, or that which tends to impair the operation and efficiency of this Department or employee. Many of the comments made to Bandy were made in front of Bandy’s 10-year-old daughter. BWC evidence suggested Bandy’s actions were not a deliberate attempt in non-compliance and he appeared to be in complete shock from the TRO and removal order. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during the course of CLERB’s investigation that were considered in arriving at the recommended finding. CLERB determined Deputy 1 was discourteous during parts of the interaction with Bandy, and the actions were not justified.

7. Misconduct/Procedure – Deputy 1 barred Bandy from entering his home.

Board Finding: Action Justified

Rationale: Bandy stated, “I was pulled from the house with nothing, but the clothes on my back and no shoes. I expressed to them that I needed to gather a few items, including medications that I was taking. I was met with nothing but sheer hostility and aggression. The officers refused and humiliated me in front of my 10-year-old daughter. She was in tears as they told her to go in the house and rummage through my private things.” As per Court Services Bureau-Field Training Guide, “The deputies will personally serve a copy of the restraining order to the defendant. the deputies will then stand by for a “reasonable period” to allow the defendant to remove personal belongings.” BWC footage showed Bandy’s minor daughter, was eventually instructed to get a few of Bandy’s items (i.e., wallet and car keys). BWC suggested the minor was extremely distraught and upset as she gathered the immediate essential items Bandy needed to vacate the property. As per the Field Operations Manual, Use of Discretion policy, when deputies are faced with a situation where discretion can be exercised, they should make a decision that does not compromise deputies’ safety. Bandy had two registered firearms in the home. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during the course of CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. Given the totality of circumstances, the evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

8. Misconduct/Procedure – SDS D “instructed” Bandy to leave his house, while his 10-year-old daughter was home alone.

Board Finding: Action Justified

Rationale: Bandy stated, “they even instructed me to leave the house while my 10-year-old daughter was in the house alone, which I refused”. In a telephonic conversation with Bandy on 10-07-21, he stated his complaint was only against the deputy who served the order, not his partner. BWC footage showed Deputy 1 never told Bandy to leave with Bandy’s daughter in the house. His partner told Bandy to leave, due to some confusion about logistics and the child’s mother being on her way to the residence and/or near the home. After clarification from Bandy, the deputies then waited for Bandy’s daughter to exit the home. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during the course of CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

9. Misconduct/Procedure – Unidentified SDS D personnel denied Bandy’s request for BWC footage.

Board Finding: Action Justified

Rationale: Bandy stated, “I have formally requested the body camera footage from the San Diego Sheriff’s

Department, but they have stonewalled me in receiving the footage and claiming it is exempt from disclosure.” As per SDCSD P&P 6.131 entitled Body Worn Camera, “All audio, images and media associated with the BWC are the property of the San Diego County Sheriff’s Department and will not be copied, released or disseminated in any form or manner outside the parameters of this policy without the express written release from the San Diego County Sheriff or his/her designee.” Furthermore, “Deputies/CSO’s will typically not allow citizens to review recordings; however, deputy/CSO discretion is allowed to replay the recording for citizens at the scene in order to mitigate possible minor complaints.” As per SDCSD P&P 2.37 entitled, “Dissemination of information” employees shall treat the official business of the Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established Departmental procedures. Gov Code 7923.625, formerly Gov Code 6254(f)(4), mandated the release of audio and video recordings of “Critical incidents” via a Public Records Act (PRA) request, absent certain circumstances relating to an active criminal investigation, an administrative investigation, or privacy interests. “Critical incidents” are classified as incidents that involve either the discharge of firearm by law enforcement or result in death, or great bodily injury from a use of force by law enforcement. Furthermore, Penal Code 832.7, allowed the release of records, which includes audio and video evidence, via a PRA request relating to incidents that involve either the discharge of firearm by law enforcement or result in death or great bodily injury from a use of force by law enforcement, or sustained findings that involve unreasonable or excessive force, sexual assault, prejudice or discrimination, unlawful arrest, or unlawful search. This incident was not legally required to be released as per CA law and SDCSD policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

10. Misconduct/Procedure – Unidentified SDCSD staff revoked Bandy’s Carry Concealed Weapons (CCW) license.

Board Finding: Summary Dismissal

Rationale: Bandy stated, “I have done nothing wrong and to take somebody’s CCW for frivolous temporary restraining order is unjust.” Penal Code 29825 states any person who is subject to a protective order or a temporary restraining order is prohibited and ineligible to possess firearms. Penal Code 26195 states a license shall not be issued if the Department of Justice (DOJ) determines the person is prohibited by state or federal law from processing, receiving, owning or purchasing a firearm. Furthermore, CLERB contacted a Staff Services Manager II at the Department of Justice (DOJ), who stated once someone is placed on the prohibited list, they need to re-apply. The DOJ does not follow up if TROs are dropped and regardless of the outcome, the applicant will need to re-apply. CLERB’s Division of Inspectional Services liaison stated Bandy had an appointment with livescan to get his CCW on 12-22-22 and has been cleared for his CCW. As per a DIS SERF response, non-sworn staff are responsible for processing CCW licenses and as such CLERB does not have authority. The review board lacks jurisdiction.

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## **22-120/DODSON**

1. Use of Force Resulting in Great Bodily Injury – Deputy 1 used force on Robert Dodson at the George Bailey Detention Facility on 08-12-22.

Board Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. According to San Diego Sheriff’s Department (SDSD) documents, Dodson sustained an injury during a use of force incident while in custody at the George Bailey Detention Facility. It should be noted, a statement from Dodson was unable to be requested as no contact information was retrievable. According to Deputy 1’s report, after attempting to direct Dodson off the housing module, Dodson took “a bladed stance with both of his fists raised.” A use of force ensued and Deputy 1 reported he delivered “approximately three closed fist strikes to the left side of Dodson’s face.” Dodson was depicted as continuing to resist and attempting to punch or kick Deputy 1. Once secured, Dodson was transported to a hospital where he reportedly sustained a “broken nose, laceration to the face and a left eye hematoma.” SDCSD P&P Section 2.49, Use of Force, stated, “Employees shall

not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established departmental procedures, and report all use of force in writing.” SDSD P&P Addendum Section F, Use of Force Guidelines, provided more specifics in establishing procedures related to using force. Addendum Section F stated, “Deputies may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.” In describing various levels of resistance, Addendum Section F stated “Assaultive behavior is represented by conduct that suggests the potential for human injury. Such behavior may be conveyed through body language, verbal threats and/or physical actions.” Given the assaultive behavior displayed by Dodson and that he actively resisted and attempted to assault Deputy 1, it appeared the use of force was appropriate and within policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

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## **22-125/WRIGHT**

1. False Reporting - San Diego Police Department (SDPD) officers “lied” about being “assaulted” by Wright.

Board Finding: Summary Dismissal

Rationale: In the complaint to CLERB, William Wright stated, “There is also an incident where San Diego Police lied and said I assaulted them...” CLERB lacks jurisdiction per CLERB Rules and Regulations Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Subsection 4.1, Complaints: Authority, which stated, “... CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department...” It was explained to Wright that CLERB would not have jurisdiction over allegations related to conduct by SDPD. Information was provided to Wright on how to file a complaint with the Commission on Police Practices for complaints against SDPD. The Review Board lacks jurisdiction.

2. False Arrest – SDPD officers arrested Wright.

Board Finding: Summary Dismissal

Rationale: In the complaint to CLERB, Wright stated, “... I was arrested... and they said it was for not showing up in court warrant (which was a lie)...” See Rationale #1. The Review Board lacks jurisdiction.

3. Misconduct/Discourtesy – SDPD officers “made” Wright “sit in urine.”

Board Finding: Summary Dismissal

Rationale: In the complaint to CLERB, Wright stated, “... They had me sit in urine in a squad car...” See Rationale #1. The Review Board lacks jurisdiction.

4. Misconduct/Procedure – Unidentified San Diego Sheriff Department (SDSD) deputies “ignored” Wright’s report of being “threatened” by another incarcerated person.

Board Finding: Not Sustained

Rationale: In the complaint to CLERB, Wright stated, “I feared for my life and let the deputies know twice what was going on. The first time they completely ignored it.” Wright provided further information that the alleged misconduct occurred on or around 04-09-22, however could not specify a deputy related to the misconduct. SDSD Detention Services Bureau Policies and Procedures (DSB P&P) Section R.1, Inmate Classification, stated, “All inmates are screened to assess their risk of being sexually abused by other inmates or being sexually abusive toward other inmates. Depending on the risk factors, and with serious consideration of the inmate’s own perception of vulnerability, one or more of the following can be considered: special housing, transfer restrictions and/or an override of the inmate’s custody level. The screening for risk of victimization or abusiveness will be completed on a case by case basis, tailored for that individual inmate. The inmate’s participation in the screening is considered optional and in the event of a refusal to answer questions, the static known risk factors will be considered.” Further, the

policy stated, "Any employee who receives information that could change an inmate's classification code and/or housing assignment has the responsibility of advising a JPMU (Jail Population Management Unit) deputy. The JPMU deputy will evaluate the information to determine whether it requires the inmate to be reclassified." A review of all the evidence, including SDSA custody documents, incident reports and medical records, showed that Wright reported concerns for his safety to deputies and was appropriately responded to. However, the dates indicated by SDSA documents do not match Wright's statement of when the alleged misconduct occurred. Further, as a specific deputy was not identified, and given there is a lack of medical and/or detention records related to misconduct occurring on or around 04-09-22, leads to a lack of evidence supporting Wright's claim. At this juncture, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – Unidentified deputies did not protect Wright from assault while in Protective Custody.

Board Finding: Unfounded

Rationale: In the complaint to CLERB, Wright stated, "...they moved me to 'Protective Custody' in George Bailey afterwards which is where the assault happened." DSB P&P Section J.3, Segregation: Definition and Use, stated, "Protective custody (P/C) is the voluntary or involuntary placement of an inmate into separate and secure housing when there is a verified threat against their life, whether stated or implied, or when an inmate's circumstances render them a target for physical violence." Additionally, SDSA P&P Section 6.127, Prison Rape Elimination Act, stated, "The Department shall comply with The Prison Rape Elimination Act (PREA) of 2003 by establishing a zero-tolerance standard for all forms of Sexual misconduct in detention facilities, patrol station lockups, holding cells or courthouses. Sexual misconduct includes but not limited to sexual abuse and sexual harassment between detainees/inmates, volunteers, contractors, Sheriff's employee or any outside source." Based on a review of SDSA documents, it appeared deputies were responsive to Wright's safety concerns and that Wright was appropriately housed at the time the assault occurred. A review of the associated incident reports and classification documents showed Wright's assault by another incarcerated person is unrelated to deputy actions. The evidence shows that the alleged act or conduct did not occur.

6. Misconduct/Procedure – An unidentified deputy "made" Wright sleep on the Recreation Yard floor.

Board Finding: Not Sustained

Rationale: In the complaint to CLERB, Wright stated, "The deputy... made me sleep on the recreation yard floor with no blankets, pillows, or mattress." According to DSB P&P Section J.4, Enhanced Observation Housing (EOH): Definition and Use, "EOH can be single cells, multiple occupancy modules, or medical isolation for temporary housing. EOH provides close observation and assessment of inmates who may be at an elevated risk for suicide." Further, "All incarcerated persons placed in EOH will be issued a safety garment, two safety blankets, and shower shoes. A safety garment is the only item of clothing the person may possess while in EOH." SDSA documents showed Wright was placed in an EOH. Associated CCTV footage of Wright's placement into an EOH cell was unavailable. At this juncture, there was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Harassment – An unidentified deputy placed Wright in an area with hate symbols.

Board Finding: Summary Dismissal

Rationale: In the complaint to CLERB, Wright stated, "...I was housed in a cell with Nazi symbols, made to eat in a recreation yard by myself with the same Nazi symbols." It should be noted, no deputies were identified as associated with this alleged misconduct. Further, in evaluating this specific allegation, "Nazi symbols" or other graffiti in a cell or recreation yard are unrelated to staff conduct and there would be no associated policy violation. The Review Board lacks jurisdiction.



1. Misconduct/Procedure – Deputies 1 and 2 “adopted” detention policies that conflicted with “Title 15.”

Board Finding: Summary Dismissal

Rationale: On 11-30-22, CLERB received a signed complaint from David B. Turner Jr., who alleged Deputies 1 and 2 enacted policy related to “clothing exchange” in detention facilities which was in conflict with Title 15 regulations. This was not allegation of staff misconduct, regardless, an evaluation of SDS D policy in place was completed. According to SDS D Detention Services Bureau (DSB) Manual of Policies and Procedures, Section L.1, Laundry Schedule, “The standard issue of clothing shall include: One pair of footwear; Color-coded garments as outlined in Detention Services Bureau Policies and Procedures (DSB P&P) section I.47; One appropriately colored shirt; One pair of appropriately colored pants; Undergarments (defined as “White Rolls”) as noted below: Designated male – Two underwear, two pairs of socks and two white t-shirts.” Further the policy stated, “Color-coded garments shall be exchanged once a week... Socks, undergarments and t-shirts shall be exchanged once a week. Facility workers may exchange these items on a daily basis.” Title 15, Division 1, Chapter 1, Subchapter 4, Article 13, Inmate Clothing and Personal Hygiene, Section 1260, Standard Institutional Clothing, stated, “The standard issue of climatically suitable clothing to incarcerated people... shall include, but not be limited to: clean socks and footwear; clean outer garments; and clean undergarments; for males-shorts and undershirt...” Further, Title 15, Division 1, Chapter 1, Subchapter 4, Article 13, Inmate Clothing and Personal Hygiene, Section 1262, Clothing Exchange, stated, “There shall be written policies and procedures developed by the facility administrator for the scheduled exchange of clothing. Unless work, climatic conditions, illness, or California Retail Food Code necessitates more frequent exchange, outer garments, except footwear, shall be exchanged at least once each week. Undergarments and socks shall be exchanged twice each week” It should be noted, Title 15, Division 1, Chapter 1, Subchapter 4, Article 13, Inmate Clothing and Personal Hygiene, stated incarcerated persons are provided one set of undergarments, exchanged twice a week. While SDS D policy stated incarcerated persons are provided two sets of undergarments, exchanged once a week, thus indicating no issue as it pertains to Title 15. Turner’s allegations, signed under penalty of perjury, did not establish prima facie showing of misconduct arising out of the performance of sworn personnel. CLERB Rules & Regulations, Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. This complaint is submitted for summary dismissal per CLERB R&R Section 15: Summary Dismissal, Summary Dismissal may be appropriate in the following circumstances: CLERB does not have jurisdiction over the subject matter of the complaint. The Review Board lacks jurisdiction.

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**22-143/LOWDER**

1. Use of Force Resulting in Great Bodily Injury – Deputy 1 used force on Scott Lowder at the George Bailey Detention Facility on 10-17-22.

Board Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 11-17-22, CLERB was notified of a use of force resulting in great bodily injury occurring at George Bailey Detention Facility (GBDF) involving incarcerated person Scott Lowder. On 11-21-22, CLERB received documents from SDS D related to this case which showed Deputy 1 was the primary deputy involved and that Lowder sustained an injury as a result of the incident. SDS D P&P Section 2.49, Use of Force, stated, “Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing.” Regarding the use of “striking techniques,” SDS D P&P Addendum Section F stated in part, “Striking techniques are those techniques that a deputy employs using personal body weapons, i.e., fists, hands, arms, elbows, legs, head, feet and knees. Strikes are techniques in which injury may occur. There is no expectation for a deputy to receive the first strike before employing striking techniques; however, the deputy must articulate the necessity and reasonableness for striking first.” Further, “Punching techniques

may be necessary when a suspect/inmate is assaultive, or the subject exhibits signs of imminent physical attack. A fist strike to a subject's face when reasonable and necessary is not prohibited." When only considering the actual use of force, i.e. the single hand strike and subsequent arm control by Deputy 1, and when applying current SDCSD policy in evaluating if excessive force occurred, the Deputy's action would not be considered excessive force, and the action would be justified. A review of multiple sources of evidence, including CCTV footage of the incident and involved Deputy's statements, support this finding. Ultimately, a review of the evidence showed Lowder displayed pre-assaultive indicators towards Deputy 1 prior to the use of force occurring. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 failed to utilize de-escalation techniques, prior to a use of force incident involving Lowder.

Board Finding: Sustained

Rationale: An allegation of "Misconduct/Procedure" was identified during the course of the investigation into the "Use of Force Resulting in Great Bodily Injury" as discussed in Rationale #1. SDCSD P&P Addendum Section F regarding de-escalation stated, "De-escalation is defined as actions taken in an attempt to stabilize an incident in order to try and reduce the immediacy of a threat by obtaining more time, tactical options or resources to resolve an incident. The goal of de-escalation is to gain voluntary compliance of subjects, when feasible, and or to potentially reduce or eliminate the need to use force on a subject. De-escalation, crisis intervention tactics and alternatives to force techniques shall be used when it is safe and feasible to do so. De-escalation does not require that a deputy risk their safety or the safety of the public." Considering policy related to de-escalation, a review of this incident raised concerns about Deputy 1's actions, prior to the use of force. After review of all of the evidence, including CCTV footage of the incident, involved Deputy's statements and a statement from Lowder, it appeared Deputy 1 did not consider and/or use options for de-escalation, and instead, placed himself in a situation likely to result in a use-of-force incident. Further, it appeared it was "safe and feasible" to attempt de-escalation and, considering the totality of the circumstances, Deputy 1 had an opportunity to attempt de-escalation, however, failed to do so, and as such, violated policy as it relates to de-escalation. The evidence supports the allegation and the act or conduct was not justified.

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## **22-147/REAVES**

1. False Arrest – Escondido Police Department officers arrested Jauna Reaves.

Board Finding: Summary Dismissal

Rationale: Jauna Reaves stated, "...I got nearly run over by this women I don't know she called the Escondido PD and I would surrounded and captured by 3 officers. She lied and told the cops from Escondido I hit her car with my cart and they took her side and arrested me later..." CLERB does not have jurisdiction to investigate complaints against the Escondido Police Department. CLERB Rules & Regulations, Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. This complaint is submitted for summary dismissal per CLERB R&R Section 15: Summary Dismissal, Summary Dismissal may be appropriate in the following circumstances: CLERB does not have jurisdiction over the subject matter of the complaint.

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## **22-150/PATTON**

1. Misconduct/Procedure – An unidentified deputy at SDCJ "allowed" an incarcerated person into the dayroom, after "authorized hours."

Board Finding: Summary Dismissal

Rationale: On 11-17-22, CLERB received a signed complaint from Anthony Patton who alleged an unidentified deputy allowed an incarcerated person into the “off limits dayroom”; the entire San Diego Central Jail is engaged in “gross criminal misconduct” as evidenced by “non-upper torso” name plate display; and an unidentified deputy “stole” money from Patton’s account. It should be noted, Patton has failed to provide any credible evidence for any alleged misconduct. Repeatedly, Patton has submitted complaints to CLERB which have been summarily dismissed due to Patton providing testimony that is so clearly without merit that no reasonable person could sustain a finding based on the facts presented. Regardless of Patton failing to provide any credible evidence, and/or failing to define what misconduct was taking place in this case, a review of Title 15 and 24 Guidelines as well as SDSD documents and applicable policies was conducted and revealed no misconduct occurred. Patton’s allegation(s), signed under penalty of perjury, did not establish a prima facie showing of misconduct arising out of the performance of sworn personnel. CLERB does not have jurisdiction to investigate complaints against SDSD professional staff. CLERB Rules & Regulations, Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. The Review Board lacks jurisdiction and/or the complaint clearly lacks merit.

2. Criminal Conduct – Unidentified San Diego Central Jail (SDCJ) staff were involved in “gross criminal misconduct.”

Board Finding: Summary Dismissal

Rationale: See Rationale #1. The Review Board lacks jurisdiction and/or the complaint clearly lacks merit.

3. Criminal Conduct – An unidentified deputy “stole” money from Anthony Patton.

Board Finding: Summary Dismissal

Rationale: See Rationale #1. The Review Board lacks jurisdiction and/or the complaint clearly lacks merit.

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## **22-163/CARLIN**

1. False Arrest – San Diego Police Department (SDPD) officers arrested Carlin.

Board Finding: Summary Dismissal

Rationale: Kelli Carlin stated, “...Deputies followed me & then proceeded to shoot 9-10 rounds of pepper spray at me & then they let dog out on me. They cuffed me and took me to Alvarado...” A request for records from the SDSD returned a negative result with information provided by the CLERB liaison that SDPD was the arresting agency. CLERB does not have jurisdiction to investigate complaints against the SDPD. CLERB Rules & Regulations, Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or the Probation Department. This complaint is submitted for summary dismissal per CLERB R&R Section 15: Summary Dismissal, Summary Dismissal may be appropriate in the following circumstances: CLERB does not have jurisdiction over the subject matter of the complaint.

2. Excessive Force – SDPD officers “shot” Carlin with pepper spray.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Excessive Force – An SDPD canine officer gave an attack command against Carlin.

Board Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **23-008/HUNTER**

1. Use of Force Resulting in Great Bodily Injury – Deputies 1 and 2 used force to effect an arrest of Sonny Hunter which resulted in injury.

**Board Finding:** Action Justified

**Rationale:** This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 12-04-22, Sonny Hunter entered a business in the City of Vista and shoplifted multiple items from the store. When confronted by a store employee, Hunter displayed what appeared to be a knife to the employee and made threatening comments. San Diego Sheriff's Department (SDSD) deputies subsequently responded and contacted Hunter. During the deputies contact with Hunter, he was non-cooperative and Deputy 1 used an SDSD canine to apprehend Hunter. After the canine was deployed, deputy reports and Body Worn Camera (BWC) footage showed Hunter continued to resist deputies, and that Deputy 2 utilized his Conducted Energy Device (CED) on Hunter. Hunter was transported to Tri-City Medical Center where he received treatment. After being medically cleared, Hunter was subsequently booked at the Vista Detention Facility. SDSD Policies and Procedures (P&P) Section 2.49, Use of Force, stated, "Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing." Further, SDSD P&P Addendum Section F – Canines, stated, "Law enforcement trained canines are a viable intermediate force option when employed under the direction of their handlers according to the department's Canine Unit Manual. Canines are typically used in search scenarios, for deputy protection and for apprehension of fleeing subjects wherein this degree of force is justifiable. Canines certified and approved for department use may be used under the following circumstances: For the protection of the handler, other law enforcement officers and citizens. To locate, apprehend or control a felony suspect when it would be unsafe for the deputies to proceed into the area. To locate, apprehend or control armed misdemeanor suspects. To search for narcotics. For crowd control. For the protection of deputies during prisoner movement. And article searches." Regarding the use of the CED, the action appeared justified and reasonable as Addendum Section F stated, "The CED may be used in "drive-stun" mode (placing the unit in direct contact with the suspect/inmate) if reasonable to protect the deputies or others from injury and to gain control of the suspect/inmate, however, caution should be used to avoid the subject gaining control of the CED. The CED should not be intentionally placed against the suspect/inmate's face, neck, head, or groin." Based on a review of deputy reports, in conjunction with Body Worn Camera (BWC) footage of the incident, it appeared the use of force was appropriate and within policy given the totality of circumstance presented to deputies at the time of the incident. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

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## **23-009/GARWOOD**

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-3 used force on Kyle Garwood in an incident occurring at the George Bailey Detention Facility.

**Board Finding:** Action Justified

**Rationale:** This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 12-06-22, incarcerated person Kyle Garwood was involved in a use of force incident involving SDSD Deputies 1, 2 and 3 at George Bailey Detention Facility (GBDF). Garwood refused to follow the deputies' instructions to return to his assigned cell and shouted obscenities towards the deputies, which violated Inmate Rules & Regulations. When Deputy 1 attempted to escort Garwood out of the housing module, Garwood pulled away and attempted to strike the deputy with his left elbow, and a use of force ensued. Garwood sustained an injury as a result of the use of force. Considering policies and procedures (P&P) relevant to the use of force in this incident, SDSD P&P Section 2.49, Use of Force, stated, "Employees shall not use more force in any situation than

is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established departmental procedures, and report all use of force in writing.” SDDS P&P Addendum Section F, Use of Force Guidelines, provided more specifics in establishing procedures related to using force. Addendum Section F stated, “Deputies may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.” In describing various levels of resistance, Addendum Section F stated “Assaultive behavior is represented by conduct that suggests the potential for human injury. Such behavior may be conveyed through body language, verbal threats and/or physical actions.” Further, Addendum Section F stated in part, “Striking techniques are those techniques that a deputy employs using personal body weapons, i.e., fists, hands, arms, elbows, legs, head, feet and knees. Strikes are techniques in which injury may occur. There is no expectation for a deputy to receive the first strike before employing striking techniques; however, the deputy must articulate the necessity and reasonableness for striking first.” Further, “Punching techniques may be necessary when a suspect/inmate is assaultive, or the subject exhibits signs of imminent physical attack. A fist strike to a subject’s face when reasonable and necessary is not prohibited.” After a review of all the evidence, including involved deputy reports and CCTV footage of the incident, the use of force appeared within current SDDS P&P and was justified. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

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### **23-015/LINDE**

1. Misconduct/Procedure – Unidentified deputies failed to produce Abraham Linde for a video visit.

Board Finding: Summary Dismissal

Rationale: Shelley Linde stated, “My issue with the jail is communication. The video equipment is constantly having technical issues. Out of several attempts I was able to visit with my son once on video and that was 10 minutes out of 30 because he wasn’t taken to the room on time. I have waited on my computer with anxiety for 30 minutes and no show.” Following the receipt of Linde’s signed statement, she requested to have her complaint withdrawn. Linde stated, “Issue was resolved by jail Commander.” CLERB’s Rules and Regulations Section 5.7 Withdrawal of Complainants: A Complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant. The effect of such withdrawal will normally be to terminate any further investigation of the complaint of conduct, unless the Executive Officer or a CLERB member recommends that the investigation continue and CLERB, in its discretion, concurs.

2. Misconduct/Procedure – Unidentified deputies failed to instruct Linde on how to use the phone.

Board Finding: Summary Dismissal

Rationale: Linde stated, “I attempted an in person-booth visit... my son didn’t know how to work the phone. No one to help us.” See Rationale #1.

3. Misconduct/Procedure – Unidentified deputies delayed delivery of email and U.S. mail correspondence.

Board Finding: Summary Dismissal

Rationale: Linde stated, “In addition, emails are not delivered in less than a week, mail has the same issue.” See Rationale #1.

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***End of Report***

### **NOTICE**

In accordance with Penal Code Section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States.