

ORDINANCE NO. _____(N.S.)

AN ORDINANCE AMENDING SECTIONS 340, 340.9, and 340.14 OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES PERTAINING TO THE DUTIES AND JURISDICTION OF THE CITIZENS LAW ENFORCEMENT REVIEW BOARD

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Section 340 is hereby amended to read in its entirety as follows:

SEC. 340. PURPOSE AND INTENT.

It is the purpose and intent of the Board of Supervisors to establish a Citizens Law Enforcement Review Board of the County of San Diego to advise the Board of Supervisors, the Sheriff and the Chief Probation Officer on matters related to the handling of ~~citizen~~ complaints ~~which~~that charge peace officers and custodial officers employed by the County in the Sheriff's Department or the Probation Department or any person providing medical care or mental health services in County detention facilities ("Medical Service Providers") with misconduct arising out of the performance of their duties. The Citizens Law Enforcement Review Board is also established to receive and investigate specified ~~citizen~~ complaints and incidents and to investigate deaths arising out of or in connection with activities of peace officers and custodial officers employed by the County in the Sheriff's Department or the Probation Department or Medical Service Providers. In addition, the Citizens Law Enforcement Review Board is to make appropriate recommendations relating to matters within its jurisdiction, report its activities, and provide data in respect to the disposition of ~~citizen~~ complaints received by the Citizens Law Enforcement Review Board. It is the purpose and intent of the Board of Supervisors in constituting the Citizens Law Enforcement Review Board that the Review Board will be advisory only and shall not have any authority to manage or operate the Sheriff's Department or the Probation Department or direct the activities of any County officers or employees in the Sheriff's Department or the Probation Department. The Review Board shall not decide policies or impose discipline against officers or employees of the County in the Sheriff's Department or the Probation Department.

Section 2. Section 340.9 is hereby amended to read in its entirety as follows:

SEC. 340.9. DUTIES AND RESPONSIBILITIES.

The Review Board shall have the authority to:

- (a) Receive, review and investigate ~~citizen~~ complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department or Medical Service Providers that~~which~~ allege: (A) use of excessive force; (B) discrimination or sexual harassment in respect to members of the public; (C) the improper discharge of firearms; (D) illegal search or seizure; (E) false arrest; (F) false reporting; (G) criminal conduct; or (H) misconduct. The Review Board shall have jurisdiction in respect to all ~~citizen~~ complaints arising out of incidents occurring on or

after November 7, 1990; provided, however, that the Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except in the following circumstances:

- (1) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- (2) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.
- (3) An allegation that great bodily injury arose out of or was connected with actions of a peace officer or custodial officer.
- (4) An allegation of unreasonable or excessive force by a peace officer or custodial officer.
- (5) An allegation that a peace officer or custodial officer failed to intervene against another officer using unreasonable or excessive force.
- (6) An allegation that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
 - (a) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.
 - (b) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.
- (7) An allegation of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.
- (8) An allegation that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.
- (9) An allegation that a peace officer or custodial officer made an unlawful arrest or conducted an unlawful search.

~~that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the time duration of such incarceration or physical or mental incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. All action complaints shall be in writing and the truth thereof shall be attested under penalty of perjury. "Citizen eComplaints" shall include complaints received from any~~

person whatsoever without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant. "Misconduct" is defined to mean and include any alleged improper or illegal acts, omissions or decisions directly affecting the person or property of a specific ~~citizen~~ person by reason of:

- (1) An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Department or the Probation Department; or
- (2) An alleged violation of any state or federal law; or
- (3) Any act otherwise evidencing improper or unbecoming conduct by a peace officer or custodial officer employed by the Sheriff's Department or the Probation Department or a Medical Service Provider;

For purposes of Medical Service Providers, "Misconduct" also includes a deviation from standard of care, error, or omission related to medical care or mental health services.

The Review Board shall have no authority pursuant to this subdivision to take action in regard to incidents for which no ~~citizen~~ complaint has been filed with the Review Board.

- (b) Investigate the following incidents regardless of whether a ~~citizen~~ complaint regarding such incident has been filed:
 - (1) 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 or Medical Service Providers. The Review Board shall have jurisdiction in respect to all deaths of individuals coming within the provisions of this subdivision occurring on or after November 7, 1990, including deaths determined to be due to natural causes; ~~provided, however, that the Review Board may not commence review or investigation of any death of an individual coming within the provisions of this subdivision more than one year after the date of the death, unless the review and investigation is commenced in response to a complaint filed within the time limits set forth in subdivision (a) of this section.~~
 - (2) Incidents involving the discharge of a firearm by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department.
 - (3) The use of force by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department resulting in great bodily injury.
 - (4) The use of force by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department at protests or other events protected by the First Amendment.

- (c) Annually inspect County adult detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors.
- (d) Review and make recommendations on policies and procedures of the Sheriff's Department and the Probation Departments to the Board of Supervisors, the Sheriff, and the Chief Probation Officers.
- (e) Prepare reports, including at least the Sheriff or the Probation Officer as recipients, on the results of any investigations conducted by the Review Board in respect to the activities of peace officers or custodial officers or Medical Service Providers, including recommendations relating to the imposition of discipline, including the facts relied on in making such recommendations, and recommendations relating to any trends in regard to employees involved in ~~citizen~~ complaints. The Review Board is not established to determine criminal guilt or innocence.
- (f) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Probation Officer summarizing the activities and recommendations of the Review Board including the tracking and identification of trends in respect to all complaints received and investigated during the reporting period and present the annual report to the Board of Supervisors within 60 days of its adoption by the Review Board.
- (g) Notify in writing any ~~citizen~~ person having filed a complaint with the Review Board of the disposition of his or her complaint. The Chief Administrative Officer shall also receive appropriate notification of the disposition of ~~citizen~~ complaints. Such notifications shall be in writing and shall contain the following statement: "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."
- (h) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

Section 3. Section 340.14 is hereby amended to read in its entirety as follows:

SEC. 340.14. RECORDS.

Any personnel records, ~~citizen~~ complaints against County personnel in the Sheriff's Department or the Probation Department or against Medical Service Providers, and information obtained from these records, ~~that which~~ are in the possession of the Review Board or its staff, shall be confidential and shall not be disclosed to any member of the public, except in accordance with applicable law. Copies of records and complaints of the Review Board shall be made available to the Sheriff or the Probation Officer upon completion of the investigation of the Review Board unless prohibited by applicable law.

Section 4. This ordinance shall take effect and be in force thirty days after its passage, and

before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the Daily Transcript, a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY: Shiri Hoffman, Chief Deputy