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County of San Diego
CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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www.sdcounty.ca.gov/clerb

REGULAR MEETING AGENDA

Tuesday, May 28, 2024, 5:30 p.m.

County Administration Center

1600 Pacific Highway, Room 302, San Diego, 92101

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the public parking spaces.)

-AND-

Zoom Platform

<https://us06web.zoom.us/j/86564632749?pwd=7wyZbStGwRCYjhwaUWwWLXg4E1ps7q.1>

Phone: +1 669 444 9171

Webinar ID: 865 6463 2749

Passcode: 146959

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives, or any member of the public wishing to address the Board should submit a "Request to Speak" form prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to CLERB at (619) 238-6776 at least 24 hours before the meeting.

WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code Section 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Ste. 220, San Diego, CA.

1. **ROLL CALL (1 minute)**
2. **STATEMENT (just cause) and/or consideration of a request to participate remotely. (emergency circumstances) by a Board Member, if applicable. Voting item as necessary (0 minute)**
3. **PUBLIC COMMENTS (45 minutes)**

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction but not an item on today's open session agenda. Each speaker shall complete and submit a "Request to Speak" form. Each speaker will be limited to three minutes. This meeting will also be held remotely via the Zoom Platform. Click the link in the agenda header above to access the meeting. Contact CLERB at clerb@sdcounty.ca.gov or 619-238-6776 if you have questions.

4. **MINUTES APPROVAL (2 minutes)**

- a) Draft Meeting Minutes for April 23, 2024

5. PRESENTATION/TRAINING (5 minutes)

- a) CLERB Budget Presentation, Nawras Hakak, Chief Deputy

6. EXECUTIVE OFFICER'S REPORT (5 minutes)

- a) Overview of Activities of Chief Deputy and Staff
- b) Workload Report – Open Complaints/Investigations Report (Attachments B)
- c) Case Progress and Status Report (Attachments C)
- d) Executive Officer Correspondence to Full CLERB (Attachment E)

7. BOARD CHAIR'S REPORT (5 minutes)

- a) Selection of the District's Public Representative- Executive Officer Interview

8. NEW BUSINESS (10 minutes)

- a) Creation of CLERB Officer Nomination Committee
- b) Discussion & Formation of an Ad Hoc Committee to Update the Review Board's Policies & Procedures

9. UNFINISHED BUSINESS

10. BOARD MEMBER COMMENTS

11. BOARD MEMBER QUERY for SHERIFF/PROBATION LIAISON(S)

12. 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).
- b) REQUEST FOR RECONSIDERATION PER CLERB RULES & REGULATIONS 16.2
Re: 23-073/Perez & 24-034/Perez
- c) PUBLIC EMPLOYMENT RECRUITMENT
Notice pursuant to Government Code Section 54957(b)
Title: Executive Officer, CLERB

CASES FOR SUMMARY HEARING (7)

NOTICE: THE CITIZENS LAW ENFORCEMENT REVIEW BOARD (CLERB) MAY TAKE ANY ACTION WITH RESPECT TO THE ITEMS INCLUDED ON THIS AGENDA. RECOMMENDATIONS MADE BY STAFF DO NOT LIMIT ACTIONS THAT THE CLERB MAY TAKE. MEMBERS OF THE PUBLIC SHOULD NOT RELY UPON THE RECOMMENDATIONS IN THE AGENDA AS DETERMINATIVE OF THE ACTION THE CLERB MAY TAKE ON A PARTICULAR MATTER.

DEATH INVESTIGATIONS (1)

22-087/GOOD (Inv. Wigfall)

1. Death Investigation/In-custody Accident – On 01-31-21 while incarcerated at San Diego Central Jail, Kenneth Good fell from his bunk and was transported to a hospital where he was treated for his injuries. Good experienced various health complications and succumbed to his injuries and illnesses on 07-21-22.

Recommended Finding: Action Justified

Rationale: San Diego Sheriff's Department (SDSD) records were reviewed and supported that Kenneth Good was properly classified upon his entry into the SDSD jail system after his 01-25-21 arrest. SDSD documentation showed that Good was transported to a hospital when he complained of pain and numbness in his arm, which was determined to be the result of a fall from his cell bunk. Good was hospitalized for over 18 months where he experienced several health issues and ultimately succumbed to his injuries/illness on 07-21-22. SDSD documentation showed Good was compassionately released shortly before he died. Deputies from the Hospital Guard Unit (HGU) performed all necessary security checks as mandated per policy. The San Diego Medical Examiner's Office conducted an external autopsy and determined the cause of death was complications of multiple rib, left humerus and compression fractures with contributing factors of SARS-COV-2 (COVID-19) Infection; Type II Diabetes Mellitus, Wernicke Encephalopathy which is a life-threatening neurological illness caused by thiamine deficiency; as well as dementia, and the manner of death was accident. Good's jail and hospital medical records corroborated this information. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel. The evidence showed that the alleged act or conduct did occur but the deputies' actions were lawful, justified and proper.

USES OF FORCE RESULTING IN GREAT BODILY INJURY (0)

PRIORITY (1)

23-071/HUNTE (Inv. Wigfall)

1. Misconduct/Procedure – Deputy 3 ordered Jerimiah Hunte to “get on the ground.”

Recommended Finding: Unfounded

Rationale: Complainant Hunte reported that on 01-22-23, a “citizen pulled a knife and went after him.” Hunte reported he flagged down Deputy 3, who responded and yelled at Hunte, “Get on the ground!” Hunte reported he did not get on the ground out of fear for his safety as an “African American male.” BWC showed that Deputy 3 arrived on scene with two subjects engaged in a verbal altercation and said, “Both of you sit down, so we could figure out what's going on.” Deputy 3 attempted to de-escalate the situation as he spoke in a calm manner and approached the scene to assess what happened. Body Worn Camera (BWC) evidence showed Hunte spoke in a loud manner, seemed agitated and did not allow the deputy the opportunity to investigate the incident. Deputy 3 attempted to speak with Hunte who continued to speak over him and walked to and from the scene several times. Deputy 3 then called in an “active disturbance.” The evidence showed the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputies 1 and 2 ordered Hunte to “get on the ground.”

Recommended Finding: Action Justified

Rationale: Complainant Hunte reported deputies yelled at him to, “Get on the ground!” See Rationale #1. SDSD documentation showed that Deputies 1 and 2 responded to Deputy 3's call for assistance and upon arrival, Hunte seemed agitated and was uncooperative. BWC evidence showed Deputies 1 and 2 ordered

Hunte to “get on the ground” as they attempted to detain him. Per the California Peace Officer Legal Sourcebook, (CPOLS) Search and Seizure, when Hunte waived down Deputy 3 that was a “consensual encounter” as the contact between the two was voluntary. Once Deputy 3 called in an “active disturbance” deputies responded with “the purpose to resolve whether suspicious behavior is innocent or relates to crime,” which led to a detention. CPOLS also states that a detention is an exertion of authority that is something less than a full-blow arrest but more substantial than a simple “contact.” Therefore, it was reasonable to command a suspect to “get on the ground,” especially if a deputy is not aware of the circumstances, the suspect is agitated, and they need to investigate the situation. Deputies 1 and 2 responded to Sheriff Employee Response Forms (SERF) and provided confidential statements that were used in the determination of these findings. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Discrimination/Racial – Deputies 1 - 3 treated two suspects differently.

Recommended Finding: Action Justified

Rationale: Complainant Hunte reported he was a victim who flagged down a deputy for assistance but was “profiled and targeted” based on his race. Hunte stated, “As an African American, I felt they were just trying to get me on the ground and treated me like I did something wrong.” Hunte denied that deputies made any statements that implied racial bias, nor were any statements captured on BWC of that nature. SDSO P&P 2.55 Non-Bias Based Policing states that members of the San Diego County Sheriff’s Department are prohibited from inappropriately or unlawfully considering race and ethnicity in deciding whether enforcement intervention will occur. Policy also states that all investigative detentions and arrests by employees will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the U.S. Constitution. Although deputies did not use force on the other suspect, he was detained and arrested by deputies as well. Given the other subject was cooperative with deputies, harsh commands and/or force was not needed. Therefore, it was reasonable that deputies confronted and handled each suspect differently. Deputies 1 and 2 responded to a SERF and provided confidential statements that were used in the determination of these findings. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Excessive Force – Deputies 1 and 2 tased Hunte.

Recommended Finding: Not Sustained

Rationale: Complainant Hunte reported that deputies tased him as he was “getting on the ground.” Sheriff’s Policy 2.49, Use of Force, states employees shall not use more force in any situation than is reasonably necessary under the circumstances. Addendum F, Use of Force Guidelines, states deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate or afford the deputy control of the incident. Deputies attempted several times to gain Hunte’s voluntary compliance but were unsuccessful. Deputies explained they wanted to determine what occurred and warned Hunte if he did not comply, force would be used. Hunte continued to speak over deputies and did not comply. Deputy reports stated Hunte displayed a “bladed/fighting” stance (assaultive behavior) and took a step toward Deputy 1 right before deputies deployed their Conducted Energy Devices (CED). This was somewhat confirmed by BWC which showed a shirtless Hunte saying, “this is not right.” Hunte had his arms at his side, “puffed” up his chest, raised his chin up and slowly turning toward Deputy 1 and said, “yeah do what you do bitch, go ahead” as he was tased. Deputies interpreted Hunte’s “bladed stance” as assaultive behavior, but Hunte described his “stance” as “standing up for myself as he took a deep breath, stood tall and prepared to get on the ground.” Deputies 1 and 2 responded to a SERF and provided confidential statements that were used in the determination of these findings. There was insufficient evidence to either prove or disprove the allegation.

5. False Arrest – Deputy 2 arrested Hunte.

Recommended Finding: Not Sustained

Rationale: Complainant Hunte reported deputies arrested him. Hunte stated he was booked into Vista Detention Facility, (VDF) released on bail after several hours, and his charges were dropped when he went to Court. Per SDSO documentation, Deputy 2 responded to an active disturbance, which gave him the authority to detain Hunte to gather further information. Hunte’s behavior escalated which led to a use of force

and then an arrest for Penal Code 69, Resisting Executive Officer. CPOLS describes this code as “Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law...” As documented in Rationale #4, deputies described Hunte as assaultive, but there was insufficient evidence to prove or disprove the allegation.

6. Misconduct/Procedure – Deputies 1 and 3 failed to provide identifying information upon request.

Recommended Finding: Not Sustained

Rationale: SDDS P&P 2.20 Identification states, “While on duty, all employees shall furnish their first and last name and/or ARJIS number to any person requesting his or her identity, except when the withholding of such information is necessary for the performance of police duties.” As heard on BWC, Hunte asked deputies to “identify themselves”, but deputies did not provide their name and/or ARJIS number. Hunte asked Deputy 3, “What is your name” and “identify your fucking self man.” Deputy 3 just paused in response. BWC confirmed Deputy 1 attempted to respond, but Hunte spoke over him. Deputies 1 and 3 also responded to a SERF and provided confidential statements that were used in the determination of these findings. It was unknown if the “withholding of their information was necessary for the performance of police duties,” therefore there was insufficient evidence to either prove or disprove the allegation.

7. Misconduct/Procedure – Deputy 2 failed to provide identifying information upon request.

Recommended Finding: Unfounded

Rationale: SDDS P&P 2.20 Identification states, “While on duty, all employees shall furnish their first and last name and/or ARJIS number to any person requesting his or her identity, except when the withholding of such information is necessary for the performance of police duties.” As heard on BWC, Hunte asked deputies to “identify themselves.” Deputy 2 was initially unresponsive with the requested information but subsequently provided Hunte with his name and ARJIS number. Deputy 2 also responded to a SERF and provided a confidential statement that was used in the determination of these findings. The evidence showed the alleged act or conduct did not occur.

8. Misconduct/Procedure - Deputy 1 failed to utilize de-escalation techniques.

Recommended Finding: Not Sustained

Rationale: Addendum F, Use of Force Guidelines describes de-escalation 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 the 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 does not require that a deputy risk their safety or the safety of the public.” Upon Deputy 1’s arrival on scene, he exited his patrol vehicle with taser in hand and immediately ordered Hunte to the ground or he would be tased. Deputy 1 approached Hunte in an “authoritative manner” as opposed to a “calm demeanor” and repeatedly ordered Hunte to the ground under threat of taser. According to Deputy 1’s Officer Report, he utilized de-escalation techniques when he attempted to explain the situation and have Hunte sit on the ground. When deputies are faced with a situation where discretion can be exercised, they must evaluate the circumstances, consider the available resources, and rely on their training, Sheriff’s Department policies and procedures, statutory law, information-led policing, and supervision in making the appropriate decision. Deputy 1 responded to a SERF and provided a confidential statement that was used in the determination of these findings. There was insufficient evidence to either prove or disprove the allegation.

ROUTINE (4)

23-076/NUANEZ (Inv. Wigfall)

1. Misconduct/Procedure – Unidentified staff misinformed Edward Nuanez of his release status.

Recommended Finding: Not Sustained

Rationale: Edward Nuanez reported he was arrested by a UCSD Campus Police Officer, due to an outstanding warrant. SDSO documentation showed he was booked into the San Diego Central Jail on 06-02-23. Nuanez stated he was informed by an unidentified jail staff member that he would be “booked and released expeditiously.” Nuanez reported while in a holding cell, that an unidentified deputy told him he was no longer on “expedited release.” SDSO documentation showed Nuanez was released on Bond on 06-04-23. SDSO Policy Section Q.77 Permissive Release of Pre-Arrestment Misdemeanor Incarcerated Persons, states its purpose is to “expedite the release of pre-arrestment misdemeanor incarcerated persons...” Furthermore, Detentions Processing Division staff are responsible to determine an Incarcerated Persons (IPs) release status. Nuanez did not provide any dates or identifying information for sworn or professional SDSO staff who allegedly provided him with this information. There was insufficient evidence to either prove or disprove the allegation.

2. Excessive Force - Unidentified deputies used force on an unknown incarcerated person.

Recommended Finding: Not Sustained

Rationale: Complainant Nuanez reported, “As I was being wheeled into the holding cell, I hear a commotion... it’s the deputies yelling at each other making it sound like an altercation with an inmate. Then I’m wheeled past the holding cell, I see the deputies that dressed me out in blues beating the hell out of this white guy who already looked dead.” SDSO documentation showed there were two medical emergencies, three use of force incidents and no in-custody deaths at SDCJ during the time of Nuanez’s incarceration. The complainant failed to provide sufficient information to investigate this allegation further.

3. Medical/Misconduct - Medical staff made a statement about Nuanez’s medical status.

Recommended Finding: Summary Dismissal

Rationale: Complainant Nuanez reported that while he was in the holding cell, he heard a nurse make a statement about his medical status that was untrue. Per CLERB Rules and Regulations, CLERB has no authority over medical staff who are non-sworn personnel. The Review Board lacks jurisdiction.

4. Misconduct/Discourtesy - Unidentified deputies made inappropriate comments.

Recommended Finding: Not Sustained

Rationale: Complainant Nuanez reported an unidentified deputy stated he would “knock him out” and accused him of being a “liar.” Nuanez identified a Sergeant “Stonewall” in his complaint, but there are no SDSO employees with that name. There was insufficient evidence to either prove or disprove the allegation.

23-088/HALL (Inv. Klew)

1. Misconduct/Procedure – The San Diego Probation Department (Probation) transferred the aggrieved to the East Mesa Juvenile Detention Facility (EMJDF).

Recommended Finding: Action Justified.

Rationale: The complainant, Ebony Hall, alleged Probation moved the aggrieved, a juvenile in the custody of Probation, from the Youth Transition Campus (YTC) to the East Mesa Juvenile Detention Facility (EMJDF). According to documents received from Probation, the aggrieved was placed in the Youthful Offender Unit (YOU). The Youthful Offender Unit is a program at YTC. Documents provided by Probation showed the aggrieved was involved in two separate incidents, which prompted an investigation involving the aggrieved. Due to the ongoing investigation, the aggrieved was transferred from YTC to EMJDF. Based on a review of the relevant Probation documents, the decision to remove the aggrieved from YTC to EMJDF appeared appropriate. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Probation staff housed the aggrieved in Intake at the East Mesa Juvenile Detention Facility (EMJDF) for an extended period.

Recommended Finding: Action Justified.

Rationale: It was further alleged that once the aggrieved was moved to EMJDF, she was kept in the intake area of the facility for an extended period. Probation documents confirmed the aggrieved spent extensive time housed in intake while at EMJDF. Documents provided by the Probation department indicated the aggrieved was housed in intake due to continued rule violations. Probation Institutional Services Policies (ISP) Section 5.1.6, Intake/Booking/Release (IBR) Unit, describes the intake area, or "IBR", as "the Intake, Booking and Release unit of KMJDF/EMJDF. A youth's stay begins and ends in IBR. After being arrested, youth are brought through the IBR area." Given the amount of time the aggrieved spent in the intake area, concerns were raised about what procedures were in place regarding youth separated from a main housing unit. See Allegation #3. ISP Section 5.2.7 Security Classification, details how youth are identified as security risks, and stated, "Youth may be identified as a security risk when one or more of the following conditions are present... Assaultive: The youth has developed a propensity for assaultive behavior which may be physical or sexual in nature." Security Designations were separated between Unit Confinement (UC) Status, Single Room Status (SRS) and Keep Separate (KS) Status. It should be noted, according to Probation, all youth currently at EMJDF are assigned single rooms. Although the amount of time the aggrieved was housed in IBR could give rise to a concern, no policy could be identified which would prevent the action. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Probation staff at EMJDF did not regularly provide the aggrieved a shower or meal.

Recommended Finding: Not Sustained.

Rationale: It was alleged there were various days where the aggrieved was not allowed an opportunity to shower or to engage in regular programming outside of her cell. The aggrieved also reported that meals were served inconsistently. This allegation raised concern over the health and wellbeing of a juvenile in custody. California Senate Bill (SB) 1143, approved on 09-27-16, placed restrictions on the use of room confinement of minors or wards who are confined in a juvenile facility. Additionally, Welfare and Institutions Code (WIC) Section 208, added in response to SB 1143, stated in part, "'Minor' means a person who is any of the following: (A) A person under 18 years of age. (B) A person under the maximum age of juvenile court jurisdiction who is confined in a juvenile facility... 'Room confinement' means the placement of a minor or ward in a locked sleeping room or cell with minimal or no contact with persons other than correctional facility staff and attorneys. Room confinement does not include confinement of a minor or ward in a single-person room or cell for brief periods of locked room confinement necessary for required institutional operations... (c) A minor or ward may be held up to four hours in room confinement. After the minor or ward has been held in room confinement for a period of four hours, staff shall do one or more of the following: (1) Return the minor or ward to general population. (2) Consult with mental health or medical staff. (3) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population. (d) If room confinement must be extended beyond four hours, staff shall do the following: (1) Document the reason for room confinement and the basis for the extension, the date and time the minor or ward was first placed in room confinement, and when he or she is eventually released from room confinement. (2) Develop an individualized plan that includes the goals and objectives to be met in order to reintegrate the minor or ward to general population. (3) Obtain documented authorization by the facility superintendent or his or her designee every four hours thereafter." Title 15 sets minimum standards for juvenile facilities. Regarding access to a shower, Title 15, Section, 1486, Personal Hygiene, stated, "Youth shall be permitted to shower/bathe upon assignment to a housing unit and on a daily basis thereafter and given an opportunity to brush their teeth after each meal. Regarding the serving of food, Title 15, Section 1460, Frequency of Serving, stated "Meals shall be served at least three times in any 24-hour period. At least one of these meals shall include hot food. Food shall be offered to youth at the time of initial intake, shall be served to youth if more than 14 hours pass between meals, and shall be served to youth on medical diets as prescribed by the attending physician. A snack shall be provided to all youth between 2 to 4 hours after the dinner meal is served." Additionally, Title 15 Section 1371, Programs, Recreation, and Exercise, stated "Juvenile facilities shall provide the opportunity for programs, recreation, and exercise a minimum of three hours a day during the week and five hours a day each Saturday, Sunday or other non-school days, of which one hour shall be an outdoor activity, weather permitting. A youth's participation in programs, recreation, and exercise may be suspended only upon a written finding by the administrator/manager or designee that a youth represents a threat to the safety and security of the facility." Probation advised it is not specifically required to document if a youth refuses a shower, meal, or daily programming activity, however, this information would typically be recorded on a housing unit's "Daily Programming Sheet." In this case, the Daily

Programming Sheets, for the time the aggrieved was housed in intake, were unavailable. The below policy recommendation is made in response to this allegation. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – Unidentified Probation staff were discourteous to the aggrieved.

Recommended Finding: Summary Dismissal.

Rationale: Included in the complaint to CLERB was an allegation that an unidentified PO was “rude” to the aggrieved. Attempts were made to gather additional information regarding this incident, however we were unsuccessful. At this juncture CLERB was unable to identify what misconduct occurred, or who was alleged to have engaged in the misconduct. CLERB Rules and Regulations, Section 4.1, Complaints: Authority, provided that “...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...” Additionally, Section 15, Summary Dismissal, stated, “Summary Dismissal may be appropriate in the following circumstances... Lack of cooperation by the Complainant such that CLERB is unable to continue its investigation, such as a failure by the Complainant to respond to repeated inquiries when such response is necessary to the ongoing investigation.” The Review Board lacks jurisdiction.

POLICY RECOMMENDATION:

1. It is recommended the San Diego County Probation Department (Probation) implement a policy which would require that staff document when a juvenile housed in the custody of Probation refuses a shower, meal, or any other regular program, recreation or exercise, regardless of their housing assignment.

23-096/MAMAYEK (Inv. Aldridge)

1. Misconduct/Procedure – Deputy 1 identified Melissa Mamayek as the “primary aggressor” in a crime report.

Recommended Finding: Action Justified

Rationale: In her written complaint to CLERB, Mamayek reported that she was assaulted by a roommate “*who tried to illegally evict*” her. Mamayek summoned Sheriff deputies to the residence for assistance after “*the man I was living with assaulted me.*” During their investigation, Mamayek was identified as the suspect/aggressor in the case. Mamayek questioned, “*How I could be considered the primary aggressor. I never got a straight answer. The police clearly don’t believe my statements and are biased.*” According to the San Diego Sheriff’s Department (SDSD) crime report, Mamayek assaulted her roommate who sustained injury. The roommate’s injury was observed in Deputy 1’s body worn camera and documented in his report. Determining the suspect and victim in a dispute can be complex and often depends on the specific circumstances of each case. Both parties can be considered victims in different scenarios. In Mamayek’s case and based on the statements and the injury the roommate sustained, Deputy 1 deemed the roommate as the victim and Mamayek as the suspect. According to SDSD P&P Section 2.23 titled “Request for Assistance,” when any person requests assistance, or makes complaints or reports, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon consistent with established Department procedures. According to SDSD Law Enforcement Services Bureau Field Operations Manual, Policy 1 titled “Use of Discretion,” when deputies are faced with a situation where discretion can be exercised, they must evaluate the circumstances, consider the available resources, and rely on their training, Sheriff’s Department policies and procedures, statutory law, information-led policing, and supervision in making the appropriate decision. In his written report, Deputy 1 articulated why Mamayek was identified as the suspect in the case. The evidence showed that the alleged act did occur, and it was lawful, justified, and proper.

2. Misconduct/Procedure – The SDSD “denied” Mamayek a police report.

Recommended Finding: Action Justified

Rationale: In her written complaint to CLERB, Mamayek reported, “*When I called to police to get a copy of the police report, I was denied, because the police listen to me as a primary aggressor. Deputy [1] told me that that wasn’t true, and that I should’ve access to these files, which I never got.*” According to a SDSD

report, Mamayek was upset that she was not able to obtain a copy of the report due to being listed as the suspect in the case. According to a SDDS Departmental Information Source, records are released by the California Privacy Rights Act of 2020 (CPRA) or by subpoena, both having restrictions. Requests for reports may be submitted via email, fax, by mail, and in person at the Ridgehaven Office. If the victim of a crime is requesting a copy of the reports, then that request is granted. However, if it is the suspect/arrestee of a case, then their request may be denied. The evidence showed that the alleged act did occur, and it was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 1’s report was incomplete.

Recommended Finding: Unfounded

Rationale: According to Mamayek’s written complaint, she stated, *“I asked that the police reports contain my initial call when I was being illegally forced out, and that my call after the assault that showed I was continue to be harassed. I was told no. I asked how is it possible, that I called the police several times prior to the assault I called them first after the attack, and then called again as a harassment continued. I was told that a secondary police report would be filed to reflect these additional circumstances for my case. That report was never filed. I was told multiple times that my statements and additional complaints would be added to my case, and they were not, charges were never filed on my behalf... During this time advocates at the district attorneys office said they couldn’t help me because of how the police report was written, and that I needed to speak to the police to have them correct add to the report to reflect my statement and all the events leading up to the crime and after. The police are refusing to do so.”* According to SDDS documents’ Mamayek initiated the call of service to her residence regarding a verbal disturbance and assault. In review of Deputy 1’s written crime report, his report did not reflect who initiated the call of service, nor did the report advise how many phone calls were received from either involved party as those details were not pertinent to the case. Non-pertinent details are typically omitted from reports to maintain clarity, focus, and conciseness. Including extraneous information can confuse readers and dilute the main message or purpose of the report. By excluding irrelevant details, Deputy 1’s report was more effective in conveying key points and articulating his decision-making processes during the incident. According to SDDS P&P Section 2.30 titled “Failure to Meet Standards,” employees shall properly perform their duties and assume the responsibilities of their positions. Employees shall perform their duties in a manner which will tend to establish and maintain the highest standards of efficiency in carrying out the mission, functions, and objectives of this Department. According to SDDS P&P Section 2.41 titled “Departmental Reports,” employees shall submit all necessary reports on time and in accordance with established Departmental procedures. Reports submitted by employees shall be truthful and complete; no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, nor omit pertinent information reasonably expected to be included.

4. Misconduct/Procedure – The SDDS closed Mamayek’s case.

Recommended Finding: Action Justified

Rationale: In Mamayek’s letter to CLERB, she reported *“Later, when I called back to check in this badge number [Deputy 1] said that my case was closed because the man dropped charges. I said, why was it closed when I never dropped the charges. He said he would reopen, but never did. But it should have been never been closed in the first place.”* According to Deputy 1’s report, since the roommate was determined to be the victim in the case, the roommate had a choice on whether or not he desired prosecution. Initially, on 03-13-23, the roommate desired prosecution; however, on 03-19-23, the roommate informed Deputy 1 that he had changed his mind and no longer desired prosecution as Mamayek voluntarily moved out of his residence. The case was assigned a detective for case follow-up. On 05-03-23, in a SDDS Follow-Up report, Deputy 1 recommended that the case be closed by “No Prosecution.”

5. Misconduct/Procedure – Deputy 1 failed to complete a Victim’s Compensation Form.

Recommended Finding: Action Justified

Rationale: In Mamayek’s letter to CLERB, she reported *“During this time I filed for the victim compensation board to be reimbursed for my hotel expenses. [Deputy 1] said he would fill out the form required and never did. Three months later, I called to speak with his supervisor I was told that I’m just trying to get money from the state... The sergeant told me that they do not fill out forms for the victim compensation board, which isn’t*

true and I was told the paperwork for victims compensation board would be completed then they were not as I was then told they don't do such forms." In Deputy 1's SDSA Follow-Up Report, he documented that he spoke with Mamayek again, via phone call. During the telephone conversation, Mamayek informed Deputy 1 that she was seeking state funding due to being displaced from the residence and that she needed a report in order to receive the funding from programs for victims of crime. Deputy 1 provided information during CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

23-118/KALISH (Inv. Klew)

1. Excessive Force – Probation Officers (POs) 1, 2 and 4 used force against the aggrieved at the Youth Transition Campus.

Recommended Finding: Not Sustained.

Rationale: The complainant, Sharon Kalish, alleged excessive force was used against the aggrieved while he was housed at the Youth Transition Campus (YTC). Kalish alleged that POs grabbed the aggrieved by his head and "smashed it down on the cement floor" and spread the aggrieved's legs "apart as far as possible." Kalish alleged the aggrieved sustained an injury as a result of the force used by POs in this incident. Documents received from the San Diego Probation Department (Probation), confirmed the aggrieved was in the custody of Probation at the East Mesa Juvenile Detention Facility (EMJDF) and that a use of force incident occurred. CCTV footage of the incident was provided, as well as involved PO reports. To gain further information about the actions of POs 1, 2 and 4, during the incident, Probation Employee Response Forms (PERFs) were sent to each PO. The confidential responses received in each of the PERFs were considered in the evaluation of this incident. Policies relevant to this use of force incident as follows: Probation Department Institutional Services Policy Manual (ISP) Section 514, Use of force, Subsection 514.3, Use of Force, stated, "Officers may use force as reasonably appears necessary in the performance of their duties, but excessive force shall not be used. Officers must use only that amount of force that appears reasonably necessary under the circumstances in order to gain control of the youth; protect and ensure the safety of youths, staff, and others; prevent serious property damage; prevent escape; obtain compliance with facility rules and staff orders; or ensure the institution's security and good order, or for other lawful purposes. The Department provides tools, weapons, and training on techniques to use when responding to resistance and violent encounters. While various degrees of force exist, each officer is expected to use only that degree of force that is reasonable under the circumstances to successfully accomplish the legitimate and lawful purpose in accordance with this policy... Prior to resorting to the use of force, officers should, when practicable, attempt verbal persuasion, orders, or other tactics to avoid or mitigate the need for forceful action... Medical checks will be performed by a qualified health care professional on all youths who have been subjected to force as soon as practicable regardless of apparent injury. If no qualified health care professional is available, the youth shall be transported to the designated health care facility." ISP Section 7.3.4.13, the Cover Command stated, "When youth hear the command, 'COVER,' they must immediately go to a kneeling position with their hands clasped behind their head, so their arms cover the side of the head and the face area... Officers use the 'COVER' command whenever there is a problem or emergency." Considering ISP Subsection 514.3, Use of Force, as well as the involved POs incident reports, PERF responses, and CCTV footage, it is unclear whether or not the level of force used was appropriate. It should be noted, at this time, CLERB staff is unable to complete in-person interviews of POs subject to a CLERB investigation. In this case, testimony regarding the intricacies of what the involved POs observed, felt, and acted upon, would be critical in making a determination. This information is critical given use for force incidents should be evaluated without the benefit of hindsight, but rather by considering the totality of circumstances known at the time. At this time, the evidence that is available is insufficient to either justify or sustain against the actions taken by POs 1, 2 and 4. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Discourtesy – An unidentified PO used profanity towards the aggrieved.

Recommended Finding: Not Sustained.

Rationale: Kalish alleged that prior to the use of force incident an unidentified PO stated to the aggrieved, "I will do whatever the fuck I want to." It should be noted, CCTV footage of this incident does not include an audio recording. PERFs were sent to the POs present at the time of the use of force incident, and their confidential responses were considered for this allegation. At this juncture, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Intimidation – An unidentified PO stated "does it hurt yet" to the aggrieved, during the use of force incident.

Recommended Finding: Not Sustained.

Rationale: Kalish alleged that during the use of force incident, and unidentified PO "taunted" the aggrieved, stating, "does it hurt yet." See allegation #2. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Procedure – The Probation Department placed the aggrieved in "isolation" and he was "shackled for a week."

Recommended Finding: Action Justified.

Rationale: Kalish alleged that after the use of force incident the aggrieved was transferred from YTC to the East Mesa Juvenile Detention Facility (EMJDF), where he remained in "isolation and shackled for a week." Probation records showed the aggrieved was placed on Administrative Separation (A.S.) from 08-12-23 through 08-17-23. ISP Section 7.7.4, Administrative Separation (A.S.), provides guidelines for youth placed on A.S. The policy stated, "A youth should be placed on Administrative Separation only when their actions have presented a security risk..." Additionally, the policy stated, "All AS youth shall be placed in waist chains and leg shackles every time they exit their room." Based on a review of the policy, and documents related to the allegation, no misconduct could be identified with classifying the aggrieved as A.S. and subsequently placing him in waist and leg chains when out of his room. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

5. Misconduct/Procedure – The Probation Department did not provide information, regarding the use of force incident to the mother of the aggrieved.

Recommended Finding: Action Justified.

Rationale: Kalish alleged she was informed the aggrieved was involved in a use of force incident, but that when she requested further information, or to speak with the aggrieved, the request was denied. ISP Section 514.6.2 Required Notifications, 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, including the use of chemical agents." Probation documents showed that on 08-12-23, a Watch Commander called and spoke with Kalish and advised her the aggrieved was involved in a use of force incident and would be transferred to EMJDF. A follow up phone was made the same day which advised the aggrieved was transferred to EMJDF. Based on a review of the policy and documents provided by Probation, it appeared the notification requirement was met, and whether or not additional information was provided was not identified as misconduct. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Medical – Unidentified Probation staff did not provide medical care to the aggrieved in a timely manner.

Recommended Finding: Summary Dismissal.

Rationale: Kalish alleged the aggrieved sustained an injury as a result of the force used. Kalish believes medical treatment was not provided to the aggrieved in a timely manner. As described in ISP Section 514.6.2, Required Notifications, medical and mental health staff should be notified after a use of force incident. Confidential medical records for the aggrieved were reviewed and considered when making a finding in this allegation. Based on a review of the documents, it appeared the requirements of custodial staff, as stated in ISP Section 514.6.2, were met. CLERB Rules and Regulations, Section 4, Authority, Jurisdiction, Duties and Responsibilities of CLERB, provides that "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..." Currently, CLERB does not have the authority to investigate allegations involving medical staff at the Sheriff's Department or Probation Department. The Review Board lacks jurisdiction.

7. False Reporting – PO 3 wrote an “untrue” report about the use of force incident, which resulted in a “probation violation.”

Recommended Finding: Unfounded.

Rationale: Kalish alleged that PO 3 wrote an untrue report of the use of force incident which ultimately resulted in the aggrieved returning to Court where it was determined the aggrieved violated his probation terms. The report referenced by Kalish was provided by Probation and was reviewed and considered when making a finding in this allegation. The report contained a synopsis of the use of force incident and appeared to be based on PO 4's Incident Report. It should be noted, PO 3 was not present during the use of force incident. It should also be noted, records received showed determination that the aggrieved had violated his probation terms was made by a Judge after hearing testimony of the POs involved. A review of PO 3's report did not reveal any misconduct. The evidence shows that the alleged act or conduct did not occur.

8. Misconduct/Procedure – PO 3 did not meet with the aggrieved for “55 days.”

Recommended Finding: Action Justified.

Rationale: Kalish alleged that PO 3 was assigned to the aggrieved's case on 07-20-23 but did not meet with the aggrieved for a period of 55 days. Records showed the aggrieved was in a custodial setting at that time. Additional information was requested from Probation regarding this allegation. Probation advised that while a youth is in a custodial setting, there is not a specific policy which would require the assigned PO to meet with the youth. This is because while the youth is in custody, they are assigned a PO at the detentions facility who conduct regular face to face meetings with the youth. Documents provided by Probation showed the aggrieved had weekly face to face meetings with an assigned PO at EMJDF. A review of the associated documents showed PO 3 meeting or not meeting with the aggrieved, given the circumstance, is not misconduct. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

SUMMARY DISMISSAL (1)

24-030/ALBERTINI (Inv. Bohan)

1. Misconduct/Procedure – San Diego Sheriff Department (SDSD) deputies “refused” to investigate Catherine Albertini's report of theft.

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, “I have filed complaints after we discovered utility theft and wiretaps in 2018.” The dates of the incidents giving rise to the complaint occurred between 2007 and 2022. CLERB Rules & Regulations, Section 4.1.2 Complaints: Jurisdiction, CLERB shall have jurisdiction in respect to all complaints arising out of incidents occurring on or after November 7, 1990. Notwithstanding the foregoing, CLERB 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 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 incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. Albertini believed an exemption to the above rule applied in her situation; however, she was unable to produce any documentation/evidence that supported her belief. Per CLERB R&R Section 15: Summary Dismissal may be appropriate in the following circumstances: CLERB does not have jurisdiction as the complaint was not timely filed.

2. Misconduct/Procedure – The Sheriff “published” Albertini's home for auction.

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, "The Sheriff has published our home for auction based on a void judgement. The County and it's armed thugs are desperate to remove us from our home to spoil evidence." Albertini's complaint included allegations against numerous individuals, including the Sheriff, who is an elected official, that are not within CLERB's jurisdiction to investigate. According to CLERB's Rules & Regulations, 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. Per CLERB R&R Section 15: Summary Dismissal may be appropriate in the following circumstances: CLERB does not have jurisdiction over the subject matter of the complaint.

3. Criminal Conduct – Unidentified Sheriff employees were involved in "drug trafficking."

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, "I can prove the Sheriff involvement in drug trafficking." See Rationales #1 and #2.

4. False Arrest – Sheriff deputies arrested Albertini on 04-04-22.

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, "I was arrested on 04-04-22 after filming drug trafficking." See Rationale #1.

5. Excessive Force – Unidentified deputies utilized force to arrest Albertini on 04-04-22.

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, "I was arrested and injured permanently on 04-04-22." See Rationale #1

6. Misconduct/Discourtesy – Unidentified deputies told Albertini to "shut-up."

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, "On 04-04-22, I was arrested for filming drug trafficking and told to shut-up on the way to jail." See Rationale #1.

7. Misconduct/Truthfulness – Deputy Scanlon "manufactured" evidence.

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, "I have video evidence of Deputy 1 manufacturing evidence." See Rationale #1.

8. Misconduct/Retaliation – Deputy Scanlon "shut-down" Albertini's Facebook account.

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, "I have video evidence of Deputy 1 shutting down my Facebook account which documented crimes." See Rationale #1.

9. False Reporting – Sheriff deputies filed "false reports."

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, "Every Sheriff's report, dozens are all false. I have not seen them all, they refuse to release records." See Rationale #1.

10. Criminal Conduct – The Sheriff "deprived" Albertini of her Constitutional rights and assets.

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, The Sheriff has schemed and conspired to deprive us of our Constitutional rights and assets. In 2007 we had net worths of \$5 million dollars now only our home equity of 1.5 million but the condo is wasted and unmarketable." See Rationales #1 and #2.

11. Misconduct/Harassment – The Sheriff “blocked” Albertini’s emails.

Recommended Finding: Summary Dismissal

Rationale: Albertini stated, “The Sheriff even blocks some of my emails. We desperately need a protective order and fear for our lives.” See Rationales #1 and #2.

End of Report