

ORDINANCE NO. (N.S.)

AN ORDINANCE AMENDING SECTIONS 340, 340.9, AND 340.15 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. The Board of Supervisors finds and determines that the purpose of this ordinance is to amend parts of Article XVIII the San Diego Code of Administrative Ordinances related to the Citizen's Law Enforcement Review Board to expand its jurisdiction related to in-custody death investigations and increase its effectiveness as a law enforcement oversight board as instructed by the Board of Supervisors on December 10, 2024 (35).

Section 2. Section 340 of the San Diego County Code of Administrative Ordinances, hereby amended 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 against peace officers and custodial officers employed by the County in the Sheriff's Office or the Probation Department that allege 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 investigate deaths arising out of or in connection with activities of peace officers and custodial officers employed by the County in the Sheriff's Office or the Probation Department, as specifically outlined below in Section 340.9. Additionally, when investigating the death of any individual which occurs while the individual was in custody of the Sheriff's Office or the Probation Department, or occurs within six months of that individual's release from custody pursuant to "compassionate release", the Review Board shall have the authority to investigate any peace officer, custodial officer, employee or contractor working under the direction of the Sheriff or Probation, including contracted health care providers ("Contract Staff"). Finally, 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 Office or the Probation Department or direct the activities of any County officers, employees, or Contract Staff. The Review Board shall not decide policies or impose discipline against officers, employees or Contract Staff.

Section 3. Section 340.9 of the San Diego County Code of Administrative Ordinances is hereby amended to read 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 Office or the Probation Department 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; (H) misconduct; or (I) deaths of any individual which occurs while the individual was in-custody or within six months of compassionate release. The Review Board shall have jurisdiction in respect to all citizen complaints arising out of incidents occurring on or after November 7, 1990. All action complaints shall be in writing and the truth thereof shall be attested under penalty of perjury.

(1) "Citizen complaints" shall include complaints received from any person whatsoever without regard to age, citizenship, residence, criminal record, incarceration, or any other characteristic of the complainant.

(2) "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 by reason of:

(A) An alleged violation of any general, standing or special orders or guidelines of the Sheriff's Office or the Probation Department; or

(B) An alleged violation of any state or federal law; or

(C) Any act otherwise evidencing improper or unbecoming conduct by a peace officer, employee, or custodial officer, employed by the Sheriff's Office or the Probation Department, including Contract Staff; or

(D) For purposes of health care providers, a deviation from standard of care, error, or omission related to any health service provided.

(3) In the event of any investigation pursuant to subdivision (a)(I) above, related to the death of an individual which occurs while the individual was in the custody of the Sheriff Office or Probation Department, or occurs within six-months of that individual's release pursuant to "compassionate release" (See Cal. Gov't Code §§ 26605.5, 26605.6), the Review Board shall have the jurisdiction to investigate any peace officer, custodial officer, employee or contractor, including any contracted health care provider, working under the direction of the Sheriff or Probation.

(A) As part of any investigation of a health care provider, the Review Board shall consider whether the health care provider's function in the detention facility was adequately staffed at the time the incident under investigation took place.

(4) 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 Review Board must investigate all in-custody deaths, including those classified as "natural," and shall prioritize investigations involving death over all other investigations. In the event of the death of any individual which occurs while the individual was in the custody of the Sheriff's Office or Probation Department or occurs within six months of that individual's release from custody pursuant to "compassionate release" (see Cal. Gov't Code 26605.5, 26605.6), the Review Board shall have the jurisdiction to investigate any peace officer, custodial officer, employee, or contractor working under the direction of the Sheriff or Probation, including any contracted health care provider. 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.

(A) As part of any investigation of a health care provider, the Review Board shall consider whether the health care provider's function in the detention facility was adequately staffed at the time the incident under investigation took place.

(2) Incidents involving the discharge of a firearm by peace officers or custodial officers employed by the County Sheriff's Office or the Probation Department.

(3) The use of force by peace officers or custodial officers employed by the County Sheriff's Office 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 Office or the Probation Department at protests or other events protected by the First Amendment.

(c) 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, custodial officers, employees, or contractors working under the direction of Sheriff or Probation, 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.

(d) Prepare an annual report to the Board of Supervisors, the Chief Administrative Officer, the Sheriff and the Chief 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.

(e) Notify in writing any citizen 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."

(f) Establish necessary rules and regulations for the conduct of its business, subject to approval of the Board of Supervisors.

(g) Review and make recommendations on policies and procedures of the Sheriff's Office and the Probation Departments to the Board of Supervisors, the Sheriff, and the Chief Probation Officers.

(h) Annually inspect County adult detention facilities and annually file a report of such visitations together with pertinent recommendations with the Board of Supervisors.

(i) Prioritize investigations of incidents involving death over all other investigations. The Review Board shall promulgate its own regulation on the prioritization of other types of investigations.

(j) Implement and comply with reporting requirements as an accountability mechanism to ensure that the Review Board completes all investigations within one year of when it discovers any act, omission or other allegation of misconduct consistent with state law, *see* Cal. Gov't Code § 3304, (the Peace Officer's Bill of Rights, or "POBR.") Consistent

with the one-year investigatory time limit set by California Government Code 3304(d) it shall be the policy of the Review Board to complete all investigations within one year of the date on which the Review Board discovers the alleged act, omission or other misconduct. If the Review Board fails to complete an investigation within one year or anticipates that it will fail to complete the investigation within one year, the Executive Officer of the Review Board shall report to the Board of Supervisors within thirty days after the one-year limit has run on: (i) whether the one-year time limit prescribed by California Government Code 3304(d) governing investigations of sworn officers applies; (ii) if the one-year limit applies, whether any tolling provision listed under California Government Code 3304(d)(2) applies; and, (iii) if no tolling provision listed under California Government Code 3304(d)(2) applies, a succinct explanation of any reasons why the investigation could not be completed within one year. Under no circumstance will the Review Board dismiss an investigation or complaint involving a death due to inability to complete the investigation within the time limit prescribed by POBR. The Review Board shall have jurisdiction to reopen a case if the requirements of California Government Code section 3304(g) are met, if applicable.

(k) Reopen a closed case, in narrow circumstances, if the requirements of section 3304(g) of the California Government Code are satisfied.

Section 4. Section 340.15 of the San Diego County Code of Administrative Ordinances is hereby amended to read as follows:

SEC. 340.15. COOPERATION AND COORDINATION.

In the discharge of its duties, the Review Board shall receive complete and prompt cooperation from all officers, employees, and Contract Staff of the County. The Review Board and other public officers, including the Sheriff, the District Attorney, and the Grand Jury, shall coordinate their activities so that the other public officers and the Review Board can fully and properly perform their respective duties.

Section 6. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen (15) days after its passage, a summary hereof shall be published once with names of the members of this Board voting for and against it in a publication of general circulation in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY

David J. Smith, Acting County Counsel

BY: Jill Kovaly, Senior Deputy County Counsel