

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS
TUESDAY, DECEMBER 10, 2024**

MINUTE ORDER NO. 35

**SUBJECT: IMPROVING PUBLIC SAFETY THROUGH EFFECTIVE CIVILIAN
OVERSIGHT OF LAW ENFORCEMENT (DISTRICTS: ALL)**

OVERVIEW

According to the California State Auditor’s report released in February 2022, San Diego County (“County”) had the highest rate of in-custody deaths among all counties in the state of California between the years 2006-2020. Concerningly, the jail death rate continued to increase after the report’s subject period: the in-custody death rate nearly doubled in 2021-2022 from 2.4 deaths per 1,000 average daily population (“ADP”) to 4.6, largely driven by a spike in drug overdoses-often fentanyl. Recent changes to state law and in the Sheriff’s policies have addressed some of the underlying causes for the high number of in-custody deaths, and the number of such deaths in 2024 is set to be significantly lower compared to previous years. But there is more the County can do.

The State Auditor’s Report identified deficiencies in how the County’s Citizens Law Enforcement Review Board (“CLERB”) has conducted investigations of jail deaths. The Report found that CLERB failed to investigate nearly a third of all custodial deaths between 2006 and 2017. For example, CLERB dismissed investigations of 13 in-custody deaths that occurred between 2011 and 2016 because the investigations exceeded the one-year time limit on investigations of peace officer misconduct set by the Police Officers’ Bill of Rights (“POBR”), Cal. Gov’t Code § 3304(d). The Report concluded that this was because CLERB first “learned in 2017 that the one-year time limit also applied to investigations of deaths.” The Report also found that many custodial deaths caused by deficient medical care were insufficiently investigated because CLERB lacks authority to investigate persons other than sworn peace *officers* and therefore cannot investigate the alleged misconduct of healthcare providers working in County jails.

CLERB is a *law enforcement* review board, and the provision of medical care is often not thought of as a traditional law enforcement function. However, the Sheriff and Probation are constitutionally obligated to provide adequate healthcare to detained persons in their custody. Providing medical care to incarcerated persons is therefore a law enforcement function that should fall within CLERB’s purview as a law enforcement oversight body. Recent legislative changes at the state level and policy changes within the Sheriff’s Office have decreased jail deaths in 2024, continuing the declining trend beginning in 2023. Nonetheless, the County should implement various reforms to CLERB to allow the agency to more effectively carry out its critical task of independently investigating misconduct and deaths of individuals in the custody of County law enforcement agencies.

This is a request to amend County laws governing CLERB to address past deficiencies and make CLERB an effective law enforcement oversight board. At a high level, this is a request for the Board of Supervisors (“Board”) to direct the County Administrative Officer and County Counsel to do the following:

- Draft an amended ordinance which would
 - o expand CLERB’s jurisdiction, only in the case of an in-custody death, to investigate **any** employee or contractor working under the direction of the Sheriff or Probation, including contracted health care providers;

- o implement a reporting requirement as an accountability mechanism to ensure that CLERB completes investigations within one year of when it discovers allegations of misconduct, consistent with state law, *see* Cal. Gov’t Code § 3304(d) (the Police Officer’s Bill of Right, or “POBR”);
 - o require CLERB to prioritize investigations of incidents involving death over all other investigations;
 - o require CLERB to investigate all in-custody deaths, including those classified as “natural”; and
 - o provide CLERB with jurisdiction to reopen a closed case, in narrow circumstances, if the requirements of California Government Code section 3304(g) are met.
- Estimate the cost and staffing needs of expanding CLERB’s jurisdiction as outlined above.
 - Produce a comparative analysis which identifies civilian oversight boards in other jurisdictions and their approach to investigating health care providers working under law enforcement agencies and comparing those models to this proposal.

RECOMMENDATION(S)

SUPERVISOR MONICA MONTGOMERY STEPPE

1. Direct County Counsel to draft an amended ordinance making the following changes to San Diego County Administrative Code §§ 340-340.15 relating to the Citizens Law Enforcement Review Board (“CLERB”):
 - a. In the event of the death of any individual which occurs while the individual was in the custody of the Sheriff’s Office (“the Sheriff”) or the Probation Department (“Probation”), 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), CLERB 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. As part of any investigation of a health care provider, CLERB 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.
 - b. Consistent with the one-year investigatory time limit set by California Government Code § 3304(d) (the Police Officer’s Bill of Right, or “POBR”), it shall be the policy of CLERB to complete all investigations of alleged misconduct **within one year of the date on which CLERB discovers the alleged misconduct**. If CLERB 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 CLERB 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 CLERB dismiss an investigation or complaint involving a death due to inability to complete the investigation within the time limit prescribed by POBR.

- c. CLERB shall prioritize investigations of incidents involving death over all other investigations. CLERB shall promulgate its own regulation on the prioritization of other types of investigations.
 - d. Pursuant to San Diego County Administrative Code § 340.9(b)(1), CLERB shall investigate all in-custody deaths, including those classified as “natural.”
 - e. CLERB shall have jurisdiction to reopen a case if the requirements of California Government Code section 3304(g) are met, if applicable.
2. Direct the Chief Administrative Officer to estimate the cost, staffing, and contract needs of expanding CLERB’s 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 in cases involving in-custody deaths.
 3. Direct the Chief Administrative Officer to identify civilian law enforcement oversight boards in other jurisdictions, if any, that allow for investigations of medical providers working in jails or prisons, and to produce a comparative analysis of different models in different jurisdictions.
 4. Direct the Chief Administrative Officer to engage in the meet and confer process with labor organizations affected by the reforms outlined in Recommendation 1.
 5. Request CLERB to update its rules and regulations to reflect the changes outlined in Recommendation 1, and report back to the Board of Supervisors within 60 days with the proposed rules and regulations.
 6. Direct County Counsel to report back to the Board of Supervisors with an initial draft of the amended ordinance reflecting the changes outlined in Recommendation 1 within 60 days.
 7. Direct the Chief Administrative Officer to report back to the Board of Supervisors on Recommendations 2-3 within 60 days.
 8. Direct the Chief Administrative Officer and County Counsel to return to the Board of Supervisors with a final proposed amended ordinance, final proposed rules and regulations approved by CLERB, and any updates to the analyses conducted pursuant to Recommendations 2-3 within 30 days after CLERB has approved new rules and regulations after the meet and confer process has concluded.

EQUITY IMPACT STATEMENT

Encouraging effective civilian oversight of law enforcement demonstrates a commitment to promoting equity, justice, and inclusivity.

SUSTAINABILITY IMPACT STATEMENT

Encouraging effective civilian oversight of law enforcement will further the County of San Diego’s commitment to promoting justice for all San Diegans.

FISCAL IMPACT

Funds for the actions requested are included in the Fiscal Year 2024-25 Operational Plan based on existing staff time in the San Diego County Citizens Law Enforcement Review Board and County Counsel funded by General Purpose Revenue. There will be no change in net General Fund cost and no additional staff years. There may be fiscal impacts associated with future related recommendations which staff would return to the Board of Supervisors for consideration.

BUSINESS IMPACT STATEMENT

N/A

ACTION:

ON MOTION of Supervisor Montgomery Steppe, seconded by Supervisor Lawson-Remer, the Board of Supervisors took the following actions:

1. Direct County Counsel to draft an amended ordinance making the following changes to San Diego County Administrative Code §§ 340 340.15 relating to the Citizens Law Enforcement Review Board (“CLERB”):
 - a. In the event of the death of any individual which occurs while the individual was in the custody of the Sheriff’s Office (“the Sheriff”) or the Probation Department (“Probation”), 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), CLERB 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. As part of any investigation of a health care provider, CLERB 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.
 - b. Consistent with the one year investigatory time limit set by California Government Code § 3304(d) (the Police Officer’s Bill of Right, or “POBR”), it shall be the policy of CLERB to complete all investigations of alleged misconduct within one year of the date on which CLERB discovers the alleged misconduct. If CLERB 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 CLERB 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 CLERB dismiss an investigation or complaint involving a death due to inability to complete the investigation within the time limit prescribed by POBR.
 - c. CLERB shall prioritize investigations of incidents involving death over all other investigations. CLERB shall promulgate its own regulation on the prioritization of other types of investigations.
 - d. Pursuant to San Diego County Administrative Code § 340.9(b)(1), CLERB shall investigate all in custody deaths, including those classified as “natural.”
 - e. CLERB shall have jurisdiction to reopen a case if the requirements of California Government Code section 3304(g) are met, if applicable.

2. Direct the Chief Administrative Officer to estimate the cost, staffing, and contract needs of expanding CLERB’s 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 in cases involving in custody deaths.
3. Direct the Chief Administrative Officer to identify civilian law enforcement oversight boards in other jurisdictions, if any, that allow for investigations of medical providers working in jails or prisons, and to produce a comparative analysis of different models in different jurisdictions.
4. Direct the Chief Administrative Officer to engage in the meet and confer process with labor organizations affected by the reforms outlined in Recommendation 1.
5. Request CLERB to update its rules and regulations to reflect the changes outlined in Recommendation 1, and report back to the Board of Supervisors within 60 days with the proposed rules and regulations.
6. Direct County Counsel to report back to the Board of Supervisors with an initial draft of the amended ordinance reflecting the changes outlined in Recommendation 1 within 60 days.
7. Direct the Chief Administrative Officer to report back to the Board of Supervisors on Recommendations 2 3 within 60 days.
8. Direct the Chief Administrative Officer and County Counsel to return to the Board of Supervisors with a final proposed amended ordinance, final proposed rules and regulations approved by CLERB, and any updates to the analyses conducted pursuant to Recommendations 2 3 within 30 days after CLERB has approved new rules and regulations after the meet and confer process has concluded.
9. Direct the Chief Administrative Officer to identify funding to accommodate additional staff in the Sheriff’s Office and Probation Department to meet the expansion of CLERB’s jurisdiction as recommended in the action.

AYES: Vargas, Lawson-Remer, Montgomery Steppe, Desmond

ABSENT: Anderson

State of California)
County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter