



NATHAN FLETCHER

**SUPERVISOR, FOURTH DISTRICT
SAN DIEGO COUNTY BOARD OF SUPERVISORS**

AGENDA ITEM

COUNTY OF SAN DIEGO
2020 JUN 19 AM 8:16
CLERK OF THE BOARD
OF SUPERVISORS

DATE: June 23, 2020

TO: Board of Supervisors

SUBJECT

**INCREASING INDEPENDENCE AND STRENGTHENING OVERSIGHT OF THE
CITIZENS' LAW ENFORCEMENT REVIEW BOARD (DISTRICTS: ALL)**

OVERVIEW

On May 25, 2020, George Floyd's name was added to the long list of Black Americans who have been unjustly killed by law enforcement. George Floyd's death has sparked a movement. A movement to raise the voices of Black Americans and reform policies that disproportionately target Black communities. Justice cannot wait.

Ensuring the independence and expanded authority of civilian law enforcement oversight groups is critical to advancing the course of just and equitable policies. Holding law enforcement accountable provides us with a clear path to prevent future unnecessary deaths and injustices.

San Diego County voters established the Citizens' Law Enforcement Review Board (CLERB) in 1990 to provide independent investigation and oversight of the Sheriff and Probation Departments. CLERB is composed of eleven volunteer board members nominated by the County's Chief Administrative Officer and appointed by the Board of Supervisors. In addition to the volunteer board members, five County employees support CLERB: an executive officer, three investigators and an administrative professional. CLERB has the power to subpoena witnesses and evidence for use in its investigations and employs its own independent investigators. CLERB provides an annual report, which summarizes the cases investigated, the policy recommendations made and tracking of the types of complaints received.

The County Charter directs CLERB to receive, review and investigate a wide variety of complaints regarding the conduct of peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department. CLERB is only authorized to review these actions if there has been a complaint submitted by a member of the public. CLERB also has the authority to review all deaths that occur in custody or in connection with the actions of peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department, regardless of whether a complaint has been filed. The Board of Supervisors may direct CLERB to undertake additional duties, by ordinance.

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CLERB has had its challenges in recent years. In 2017, 22 death cases were summarily dismissed because the investigations were not completed within the one-year limit on the review (outlined in Cal. Gov. Code § 3304). Over the years, CLERB has been chronically understaffed and subject to budget reductions.

In recent years, there has been a renewed emphasis on supporting and reforming CLERB and staffing has increased from one investigator to the current three investigators. According to the 2018 CLERB Annual Report, no cases were dismissed as a result of the expiration of the one-year time limitation on investigations.

CLERB serves an important role and improvement in three areas would make CLERB an even more valuable asset and a more effective body. I am proposing measures that would strengthen CLERB by ensuring its independence, increasing its oversight and expanding its authority.

I am asking that our Board direct the Chief Administrative Officer to initiate the required process for approval in order to: reassign CLERB functions to the Finance and General Government Group; request a revised nomination and selection process from CLERB to better incorporate community input and provide transparency; recommend changes to the budget for CLERB to ensure efforts are adequately supported; and return to this Board with an ordinance amendment that would give CLERB the authority to investigate incidents involving the use of a weapon, use of force causing great bodily injury, and use of force at First Amendment protests, without the need for a citizen complaint. Additionally, I am asking our Board to direct the CLERB Executive Officer to make an annual presentation to this body to summarize the activities from the year and present policy recommendations with context and explanations.

I urge your support for these proposals.

**RECOMMENDATION(S)
SUPERVISOR NATHAN FLETCHER**

1. Direct the Chief Administrative Officer to reassign CLERB functions and staff positions from the Public Safety Group of the County of San Diego to the Finance and General Government Group, effective July 1, 2020.
2. Direct the Chief Administrative Officer to request from CLERB a revised nomination and selection process that is more transparent to the public and incorporates community input as a part of the nomination and selection process.
3. Direct the Chief Administrative Officer to evaluate CLERB workload and responsibilities and, as appropriate, recommend changes to the budget for staffing, services and supplies to ensure the successful implementation of the recommendations in this board letter and the timely completion of all CLERB investigations, including those that are subject to the one-year timeline required by State law, and refer these changes to budget for consideration during the Fiscal Year 2020-21 budget deliberations and adoption.

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4. Direct CLERB's Executive Officer to present CLERB's annual report to the Board of Supervisors within 60 days of CLERB's adoption of the yearly report.

5. Direct the Chief Administrative Officer to return to the Board within 60 days after the required process for approval with an ordinance amending Sec. 340.9 of the Code of Administrative Ordinances to reflect additions to CLERB's oversight role, including the following:
 - a. Authority to investigate any incidents involving the discharge of a weapon by peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department;
 - b. Authority to investigate 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.
 - c. Authority to investigate 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;
 - d. Removal of the requirement that a complaint must be filed for CLERB to invoke jurisdiction over non-death investigations.

FISCAL IMPACT

Funds for this request are partially included in the Fiscal Year 2020-21 Interim Operational Plan for the Public Safety Group. If approved, recommendation 1 will transfer existing appropriations and related staffing from the Public Safety Group to the Finance and General Government Group and will result in no additional costs or revenues, and no staffing increases.

Fiscal Year 2020-21 costs and funding required to implement recommendation 3 are not known at this time and will be referred to budget for consideration during the Fiscal Year 2020-21 budget deliberations and adoption.

BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

On May 25, 2020, George Floyd's name was added to the long list of Black Americans who have been unjustly killed by law enforcement. This list is too long and illustrates the overarching problem of systemic racism in our institutions.

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George Floyd's death has sparked a movement. A movement to raise the voices of Black Americans and reform policies that disproportionately target Black communities. Today marks the 29th day of protests that were triggered not only nationally but internationally. Justice cannot wait.

Ensuring the independence and expanded authority of civilian law enforcement oversight groups is critical to advancing the course of just and equitable policies. Holding law enforcement accountable provides us with a clear path to prevent future unnecessary deaths and injustices.

San Diego County voters established the Citizens' Law Enforcement Review Board (CLERB) in 1990 to investigate citizen complaints against peace officers or custodial officers employed by the County Sheriff's Department and the Probation Department after a series of abuse allegations inside San Diego County jails became public. The voters created CLERB to provide independent investigation and oversight of the Sheriff and Probation Departments.

CLERB is composed of eleven volunteers from the County's five Supervisorial Districts. Applications to join CLERB are open to the public, but applicants must not be employed by the Sheriff's Department, Probation Department, or the County of San Diego. CLERB members are nominated by the County's Chief Administrative Officer and appointed by the Board of Supervisors. In addition to the volunteer CLERB board members, five County employees support CLERB: an executive officer, three investigators and an administrative professional.

County Charter Section 606 outlines the role of CLERB and directs CLERB to receive, review and investigate complaints about the conduct of peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department while performing their duties. The conduct that CLERB has the authority to review according to the County Charter includes the use of excessive force, discrimination or sexual harassment in respect to members of the public, the improper discharge of firearms, illegal search or seizure, false arrest, false reporting, criminal conduct or misconduct. CLERB is only authorized to review these actions if there has been a complaint submitted by a member of the public.

While CLERB generally only investigates after the submission of a complaint, CLERB does have the authority to review all deaths that occur in custody or in connection with the actions of peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department, regardless of whether a complaint has been filed.

The Board of Supervisors may direct CLERB to undertake additional duties, by ordinance.

CLERB has the power to subpoena witnesses and evidence for use in its investigations and employs its own independent investigators. Once an investigation is complete, CLERB makes an advisory finding to be submitted to the Sheriff or Probation Department on whether the action was justified. Additionally, CLERB makes recommendations for policy and procedure changes to the Sheriff and Probation departments. CLERB provides an annual report to the Board of Supervisors, the Sheriff's Department, and the Probation Department, which summarizes the

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cases investigated, the policy recommendations made and tracking of the types of complaints received.

According to CLERB's 2018 Annual Report (the most recent available), CLERB logged 155 new complaints in 2018 and received 24 death cases. During that time, 102 cases were fully investigated and submitted to CLERB. Fifty-five cases were procedurally closed because a signed complaint was not returned by the complainant.

CLERB has had its challenges in recent years. In 2017, 22 death cases were summarily dismissed because the investigations were not completed within the one-year limit on the review (outlined in Cal. Gov. Code § 3304). Over the years, CLERB has been chronically understaffed and subject to budget reductions. As a result, there have been times when the staff was unable to review all cases within its purview.

Since CLERB's challenges have been recently publicized, there has been a renewed emphasis on supporting and reforming CLERB. In recent years, staffing has increased from one investigator to the current three investigators. According to the 2018 CLERB Annual Report, no cases were dismissed as a result of the expiration of the one-year time limitation on investigations. In 2019 Julio Estrada, who has over 20 years of public safety experience and who is a specialist in death investigations, was appointed to serve as Executive Officer of CLERB.

This trend of support should continue, and increasing staffing and resources for CLERB should be a budgetary priority for this Board.

While CLERB serves an important role, improvement in three areas would make CLERB an even more valuable asset and a more effective body. Particularly during this time when the public is demanding accountability of law enforcement, we should work to ensure CLERB's independence, increase CLERB's oversight and expand CLERB's authority.

Ensuring Independence

Although CLERB has its own offices and staff, structurally it is housed within and receives staff support from the Public Safety Group of the County of San Diego. Associating CLERB functions and staff positions with the Finance and General Government Group instead would make it clear that CLERB is unaffiliated with the departments over which it is supposed to have oversight.

While applications to serve on CLERB are open to the public, the process from application to nomination by the Chief Administrative Officer is an internal one. The application process to be a member of CLERB should be robust and more transparent to the public and should allow for community input. CLERB is in the best position to determine how that process could improve to make it more responsive to the community.

Increasing Oversight

While CLERB presents policy recommendations to the Sheriff and Board of Supervisors by way of an annual report, CLERB should also make an annual presentation to the Board of Supervisors

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to summarize the activities from the year and present policy recommendations with context and explanations.

We cannot ask CLERB, which already works on a lean budget and with an already high demand, to do more without also acknowledging that increases in responsibility require an increase in resources. Therefore, we must make an increase of CLERB resources and staffing a budget priority.

Expanding Authority

While CLERB has the authority to investigate all deaths that arise out of, or in connection with, the actions of peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department, all other investigations must be initiated by a complaint. The Board of Supervisors may direct CLERB to undertake additional duties, by ordinance. We should expand the role of CLERB to provide it with the authority to investigate other serious incidents, regardless of whether a complaint has been filed. There are many valid reasons that a member of the public might not want to assign their name to a complaint against law enforcement. Serious incidents should be investigated whether spurred by a complaint or not.

For example, CLERB should have the authority to investigate all incidents related to peace officers or custodial officers employed by the County Sheriff's Department or the Probation Department where 1) a weapon was discharged, 2) the use of force resulted in serious bodily injury or 3) any use of force at protests or other events protected by the First Amendment.

Why These Changes are Necessary

Around the country, communities are taking a close look at law enforcement oversight bodies to determine what can be improved to ensure appropriate accountability. While CLERB is ahead of other regional entities, such as the City of San Diego, because it already has subpoena power and independent investigators, it can improve. We must make supporting and strengthening CLERB a priority to ensure that we are heeding our communities' calls for justice.

I urge you to support the measures in this Board Letter to strengthen CLERB by ensuring its independence, increasing its oversight and expanding its authority. I am proposing that our Board direct the Chief Administrative Officer to initiate the required process for approval in order to: reassign CLERB functions to the Finance and General Government Group; request a revised nomination and selection process from CLERB to better incorporate community input; recommend changes to the budget for CLERB to ensure efforts are adequately supported; and return to this Board with an ordinance amendment that would give CLERB the authority to investigate incidents involving the use of a weapon, use of force causing great bodily injury, and use of force at First Amendment protests, without the need for a citizen complaint.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

The requested action supports the Live Well San Diego Initiative in the County's 2020-2025 Strategic Plan, and its vision for a San Diego that is Building Better Health, Living Safely and Thriving, by protecting San Diegans, especially those disproportionately at-risk of law

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enforcement violence, encouraging greater civic engagement by ensuring transparency and accessibility in law enforcement oversight, and fostering better relationships between law enforcement and the communities they serve.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nathan Fletcher", written in a cursive style.

NATHAN FLETCHER
Supervisor, Fourth District

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AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: Yes No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED
 Yes No

PREVIOUS RELEVANT BOARD ACTIONS:
N/A

BOARD POLICIES APPLICABLE:
N/A

BOARD POLICY STATEMENTS:
N/A

MANDATORY COMPLIANCE:
N/A

**ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION
NUMBER(S):**
N/A

ORIGINATING DEPARTMENT: District Four

OTHER CONCURRENCE(S): N/A

CONTACT PERSON(S):

Sarah Dawe
Name
(619) 531-5245
Phone
sarah.dawe@sdcounty.ca.gov
E-mail

Name

Phone

E-mail