

List of questions to answer in researching review boards

San Diego County: Citizens' Law Enforcement Review Board (CLERB)

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A: Types of conduct/complaints the new agency will investigate and determine outcomes (bureau complaints vs community complaints)

- * Complaints against Sheriff's Deputies and Probation Officers (not non-sworn)
- * Excessive force, discrimination, sexual harassment, improper discharge of firearm, illegal search/seizure, false arrest, false reporting, criminal conduct, death caused by deputy/corrections, misconduct.
- * Any allegations of improper or illegal act, omission or decision that directly affects a person or property.
- * Violations of orders.
- * Unbecoming conduct including discourtesy, harassment, intimidation, procedure, retaliation, truthfulness.
- * Use of force with great bodily injury, force used at protests.

A-a: Does the Board review every complaint that gets filed?

- * In 2020 the Board received 116 cases with 330 allegations, and in 11 meetings heard 139 cases.
- * * 48 cases were closed administratively.

B: Complaint process: community member vs. internal bureau complaints

- * Can file by phone, fax, email, mail, in person
- ** Collect calls ok
- * Complaints have to be in writing and signed under penalty of perjury.
- ** (7/14) Nobody has been prosecuted if the complaint is determined to be "unfounded."
- ** This is in part because CLERB is not itself a law enforcement agency.
- * Right to bring a complaint is "absolute and unconditional."

B-a: Time limits to file complaints

- * Complaints filed within one year.
- * * If incarceration or incapacitation delays filing, time is tolled.

B-b: Materials given to complainant

- * Complainant can get copy of signed complaint, not investigative files.
- * Upon request can get staff recommendation, Board meeting and decision, and have documents returned.
- * Charter requires disposition of complaint to be shared with complainant.

B-c: Who can make complaints

- * No anonymous complaints
- * Incarcerated persons can file by mail or phone
- * Regardless of age, citizenship, residence, criminal record or other characteristic.

C: Mediation options (community member and police officer) ~~(NO DATA)~~

- * (7/14) CLERB does not have authority under the County Charter to run a mediation program.

D: Case handling and investigative processes, including work flow description

- * Complainant may consult with an attorney and have a representative.
- * Staff summarizes complaint in writing and sends for complainant signature
- * * Packet includes brochure, customer survey, medical release form, confidentiality notice
- * Once signed complaint comes back, investigation begins.

- * * Copy sent to head of agency involved and involved employee
- * * Must agree not to sue CLERB
- * Staff gathers evidence (reports, photos, video)
- * * Interviews witnesses, involved employees
- * * Gives "Lybarger" warning against self incrimination to employees.
- * * May do site visit.
- * * Interviews "may be" recorded
- * Investigations to be ethical, independent, thorough, timely, fair and impartial.
- * * Avoid unnecessary embarrassment of any party including institutions.
- * Dismissals can be made if complainant cannot be contacted or is uncooperative.
- * * Also if CLERB does not have jurisdiction, if complaint is not timely, if officer is no longer employed, if complaint is without merit, or if investigation is not completed within a year.
- * Complainant can withdraw complaint.
- * If officer retires or resigns, investigation can continue.

D-a: Timeline for investigation to be completed

- * Investigations can take up to a year or they are closed
- * First in/first out except:
- * Death investigations can take longer, are prioritized

D-b: Hearing process (also see Discipline process, "G")

- * Board can dismiss complaint in part or in whole, refer for more investigation, defer action or hear case.
- * Board makes decision on findings by majority vote.
- * Findings sent to involved employee, agency and County Board of Supervisors.
- * Dissenting members can provide information within five days of the report being adopted.
- * Can hold Investigative Hearing Panel of 3 CLERB members which sends recommendations to full Board.
- * * Investigative Hearing can be requested by complainant, officer, Exec. Dir, or CLERB member.
- * * can be done if there has been a long time since the incident, if new evidence is discovered, to question the conclusion of the (staff) report, to advance public confidence, or if in-person hearing will help.
- * Officers can respond "no contest" before hearing is held; this is binding as CLERB proceeds.
- * * (7/14) Investigative Hearings Panels have never been used in the 32 years CLERB has existed.
- * Board cannot comment on substance if case is pending.
- * Hearings can be held at regular or special meetings, panels can be held at separate time.
- * Hearings need to be noticed 10 days in advance.
- * Full Board can overrule panel.
- * At Hearings:
 - * * Officer and complainant can make opening statements.
 - * * Questions to witnesses start from Chair/presiding member, then other members.
 - * ** Officer/representative or staff can ask questions.
 - * ** (Note: Nothing is mentioned about the complainant's right to ask questions.)
 - * * If compelled, officer issued Lybarger warning.
 - * * Officer or complainant can ask for panel to ask further questions.
 - * * Officer and complainant can make closing statements.
 - * * Hearing will happen in one sitting unless further investigation is required.
 - * * CLERB discusses case in closed session (Note: presumably closed to those allowed into the hearing, since the hearing itself is closed to the public)
 - * * Investigative hearing report is forwarded to complainant and officer before CLERB hears case.
 - * Hearings are recorded; transcript may be made available.
 - * Evidence entered not by technical rules, but if "responsible persons are accustomed" to use it in "serious

affairs," regardless of what the law states.

- * * Hearsay may be used.
- * Parties have rights to call witnesses, introduce exhibits, cross-examine, impeach witnesses, rebut.
- * * Officers can be called for cross examination even if they did not testify.
- * * Testimony is done under oath.
- * * Complainant can have a representative in addition to or rather than an attorney.
- * * Interpreters can be provided with 7 days' notice.
- * * Hearing can be held even if parties fail to appear.
- * * CLERB can use any legal method for discovery of evidence.
- * * Officer has access to evidence unless prohibited by law. (Nothing about complainant).
- * Procedures apply in cases where there is no complainant, such as death/firearm, bodily injury and protest force use incidents.

E: Subpoena power and access to police records

- * Board can subpoena evidence and reports

E-a: Does the board have access to all the records it needs?

- * CLERB has full access to all complaints and files held by CLERB/staff.

E-b: Can the board compel officer testimony, if so how is it accomplished?

- * Charter allows Board to require attendance of witnesses and production of documents.
- * Code says Board can receive complete and prompt cooperation from officers
- * Rules say employees respond to written questions, appear at interviews and hearings
- * * also to help with evidence
- * * not to be contacted at home, Board must use work schedule
- * * (7/14) Staff says that 99% of officers refuse to give written statements.

F: Potential findings in misconduct cases

- * Sustained
- * Not sustained (insufficient evidence)
- * Unfounded ("not true"/did not occur)
- * Action justified (lawful, justified and proper)
- * Summary dismissal
- * Board may include discipline recommendation when a finding is sustained.

F-a: Standard of review to determine findings

- * Preponderance of the evidence (based on evidence at a hearing / investigative record)

G: Discipline process – due process and just cause requirements

- * Board's recommendations are not binding (see "L")
- * Board can note trends in incidents when making findings
- * When recommending discipline, Board looks at disciplinary history of officer.

H: Appeal process – will police and community members be allowed to appeal their cases?

- * Officer or complainant can review CLERB report and submit new evidence.
- * Ten days to object to ruling.
- * Parties can object to dismissal of case.
- * County Board of Supervisors can request case be re-opened.
- * CLERB can re-open a case on its own if it is "in the public interest."

- * Officers can appeal findings to Civil Service Commission (see "L")

H-a: Standard of review to examine/determine findings in appeal phase

- * Not specified for CLERB but presumably preponderance standard
- * Preponderance standard for Civil Service Commission (see "L")

I: Will city council continue to be part of the process?

- * County Board of Supervisors can send a case back to CLERB for reconsideration.

J: Will all or part of the oversight board be involved in appeals and other case-related decisions?

- * Investigative Hearing Panels of 3 include a presiding member.
- * For deaths and other cases CLERB designates, the full Board meets, minimum of 6 members.
- * * (Note: this means regardless of quorum, six, or half of the full 11 members allowed by code)
- * Members can be replaced if the case is delayed, but not once proceedings begin.
- * Members cannot sit on a panel if they have a conflict of interest—family/friend of party, witnessed event, financial interest or bias.

K: Process for making policy and training recommendations from both community board and agency staff

- * CLERB can make recommendations on policy or rule changes along with votes on cases.

L: Chief and police commissioner's obligation to respond and follow oversight board's decisions and recommendations

- * Recommendations are advisory on findings and discipline.
- * Civil Service Commission can hear appeals from officers.
- * * CLERB receives a copy of the appeal and has to file a statement about the misconduct found and evidence supporting the finding 15 days before the hearing.
- * * Officer has right to review all information in CLERB file unless protected by law.
- * * Commission can subpoena witnesses or testimony, including at CLERB or the officer's request.
- * * Officer can request hearing to be closed to public. (NOTE: Implies can be open to public.)
- * * CLERB has to show preponderance of evidence.
- * * If officer is a no-show, case is dismissed.
- * * Officer and a CLERB representative can subpoena witnesses/documents, appear at hearing, present evidence and cross-examine.
- * * If an officer refuses to reply to questions the hearing can be postponed awaiting a response unless the refusal is due to self-incrimination.
- * * If the officer invokes this right the Commission can consider that in its decision.
- * * As with Investigative Hearings, testimony is under oath, evidence presentation is not subject to technical rules and hearsay is admissible.
- * * The findings of the Commission are final.

M: Board membership:

M-0: In what way are community members involved in the oversight system?

- * Board of civilians reviews cases.

M-1: How many

- * Charter allows 9-15 members, Code sets the number at 11.

M-2: Qualifications

- * County employees and peace officers not allowed to be on Board.

- * Registered to vote in San Diego County
- * (7/14) Members are required to fill out and sign a "statement of economic interest."
- * * That form is based in California state law and requires disclosure of investments and holdings.
- * * Some people have declined to join the oversight board rather than fill out this form.

M-3: Recruitment, replacement [removal-- see M-10]

- * Fill out application, get interviewed by staff
- * Background check done by District Attorney

M-4: Appointment process

- * County Chief Administrative Officer nominates to the Board of Supervisors
- * Supervisors vote to appoint

M-5: Representation/Diversity (NO DATA)

M-6: Length of terms – renewable or not

- * Three years, renewable for second term
- * Can continue in seat until replacement is named.

M-7: Training requirements

- * Training by Sheriff, Probation Dept. and County Counsel.
- * Ridealongs and tour facilities.
- * Familiarize with County government, CLERB, County Counsel and Code, the "Brown Act" (California public meeting guidance), state laws, officer rights, disciplinary process, training.
- * * Constitutional and civil rights law on police misconduct, agreements with collective bargaining units, diversity and inclusion bias.
- * * Community perspective on Law Enforcement.

M-8: Quorum requirements

- * Majority of currently appointed members (not based on total number of seats)
- * Majority also needed to carry a motion (Majority of members, not who's at the meeting).
- * Subcommittees cannot be made up of a quorum of CLERB.
- * Six members needed to hear deadly force and other certain cases.
- * * Only three members needed for Investigative Hearings, two votes to make decision.

M-9: Paid or unpaid

- * Unpaid, but reimbursed for expenses

M-9a: If paid, how?

M-10: Removal

- * Board of Supervisors can remove at any time.

M-11: How does the board break down its time?

- * 5-15 hours a month
- * 1-2 meetings per month.
- * Attend community meetings to talk about CLERB.

M-12: Rules for vacancies [relates to M-3, M-8 and M-10]

- * Vacancies by death, resignation, no longer being a resident, missing three consecutive meetings, failing to

complete training.

- * Chair notifies Supervisors and the member.
- * Fill within 45 days to complete original term.

M-13: What officers are there for the board?

- * Chair, Vice Chair, Secretary
- * Chair presides, votes, ensures lawful, is spokesperson, signs documents, designates subcommittees
- * * is "ex officio" member of subcommittees
- * Vice Chair acts as Chair in absence
- * Chair Pro Tem acts as Chair if Chair/Vice Chair absent
- * Secretary keeps records of proceedings, custody of record, reports, keeps roll, certifies quorum, list of members.
- * * can be appointed Pro Tem

M-14 (NEW!): Voting process

- * Roberts rules apply except as provided in CLERB rules.

N: Transparency and public access: guidelines around open meetings and public participation within limits of personnel regulations

- * In closed session:
 - * * Board, staff and legal, discussion is confidential under CA laws and court cases.
 - * Meeting agenda sent at least one week early.
 - * Special meetings can be called with 24 hour notice for a single specific posted purpose.

N-a: What happens at meetings (other than hearing cases)?

- * In open session:
 - * * Roll call
 - * * Approval of minutes
 - * * Work report by staff
 - * * Chair report
 - * * Training for members
 - * * Public input including from complainants, up to 3 minutes
 - * * New business
 - * * Unfinished business
 - * * Board member comments
 - * * Sheriff liaison "query"
 - * Chair approves agenda but members can file proposed items with staff.
 - * Independent Counsel attends.
 - * Written minutes are kept and shared with Board of Supervisors.

O: Agency director – qualifications, hiring process, authority, performance reviews

- * Executive Director serves at pleasure of Board. Can be disciplined.
- * CLERB does an annual performance review
- * CLERB can designate any duty to staff except what is required of the Board.

O-a: What other staff does the board have? [also see Q: Independent Legal Counsel]

- * At least one investigator and legal counsel
- * Total of 8 employees

P: Office location – How/where does it exist to be? free-standing? Where is the bureaucratic structure?

~~(NO DATA)~~

- * (7/14) CLERB's office is separate from Sheriff's office.
- * * It has been moved around a number of times; the latest proposal is to put it in a county building where Sheriff's deputies proved security.
- * * Though CLERB has few walk-in clients, it could still be a barrier.

Q: Independent legal counsel

- * Yes, CLERB has one.

R: Reporting requirements – quarterly and annual reports, required contents, consultation with oversight board, presentation to city council and the public

R-a: What is included in the public reports other than required contents?

- * (unclear what's required) Agendas, minutes, summary and statistical reports, early warning reports sent to agency heads.
- * 2020 report includes Board activities, recommendations (and outcomes) and trends.
- * * also includes info about Board, mission, staff, members including biographies
- * * also includes message from Chair, executive director
- * * Also complaints by year, quarter, allegations by unit, type, agency
- * * Lists Board actions by case number, date and findings.
- * * Lists death cases.

S: Public and police bureau member education on the new system (NO DATA)

T: Independent expert review of shootings and deaths in custody (NO DATA)

U: Inspector General or Police Auditor with full access to Bureau records, trainings, and staff (NO DATA)

V: What is the board's budget?

- * \$1,501,491

W: How are internal rules made for the Board?

- * Board adopts by majority vote, must be approved by Board of Supervisors.
- * Reviewed every four years.

X: What are barriers that you are facing?

- * (7/14) (1) state laws prohibiting transparency, including not being able to hold public hearings on cases or reveal officer names, and
- * (2) that their jurisdiction limits them from talking to or investigating medical personnel who may have been witness to, or somehow contributed to, people's deaths in custody.

Y: If you could add other powers and authorities to your board, what would you like to add?

- * (7/14) Audit authority to conduct pattern and practice investigations.

Z: Is there anybody else we should talk to?

- * (7/14) Max Huntsman, inspector general in Los Angeles County
- * * Sharon Fairley, an expert who conducted a review of CLERB