

F I L E D
Clerk of the Superior Court

DEC 27 2023

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**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

**IN RE CLERB AUTHORIZATION TO
VIEW PROBATION REPORTS, FILES,
AND RECORDS**

**GENERAL ORDER OF THE
PRESIDING DEPARTMENT**

ORDER NO. 010124-35

THIS COURT FINDS AS FOLLOWS:

Pursuant to the County of San Diego Charter, Article VI, section 606, and San Diego County Administrative Code, article XVIII, section 340 et seq., the county's Citizens Law Enforcement Review Board (hereafter "CLERB") investigates and advises on the handling of citizen complaints charging officers employed by the county Sheriff's Department and county Probation Department with misconduct arising out of the performance of their duties. (San Diego County Admin. Code, art. XVIII, §§ 340, 340.9(a).) CLERB also investigates and advises on incidents, even without a citizen complaint, involving the death of an individual arising out of or in connection with actions of an officer employed by the county Sheriff's Department or county Probation Department; the discharge of a firearm by an officer employed by the county Sheriff's Department or county Probation Department; the use of force by an officer employed by the county Sheriff's Department or county Probation Department resulting in great bodily injury; and the use of force by an officer employed by the county Sheriff's Department or county Probation Department at protests or other events protected by the First Amendment. (San Diego County Admin. Code, art.

1 XVIII, § 340.9(b).) Some of these complaints or incidents involve individuals with adult probation
2 reports, files, and records from a prior or current term of probation (such individuals hereafter
3 referred to as “probationer” or “probationers”). CLERB requests access to probation reports, files,
4 and records relevant to their investigatory duties.

5 Pursuant to Penal Code section 1203.05(b), upon filing a petition and obtaining a court
6 order, any person may inspect or copy a probation officer’s report filed with the court in a criminal
7 case. Pursuant to Penal Code section 1203.10(a), a Probation Department’s records for a
8 probationer, which includes the probation report filed with the court, shall be open to inspection by
9 any person allowed access by court order. *People v. Connor* (2004) 115 Cal.App.4th 669 (*Connor*)
10 requires that the subject of a probation report filed with the court have notice of a petition for access
11 to the probation report, and of the opportunity to object and be heard.

12 CLERB and the San Diego County Probation Department (hereafter “Probation
13 Department”) stipulate to the following: (1) that access to probation reports, files, and records may
14 substantially assist CLERB in conducting investigations within its jurisdiction; (2) that the proposed
15 Authorization Form, attached as Exhibit A to the stipulation, satisfies the notice requirements of
16 *Connor, supra*, and, if approved for use by the court, will not be amended without prior written
17 approval of the court; (3) if the court approves of granting CLERB access to non-confidential
18 portions of a probationer’s reports, files, and records, including “personal information” as defined
19 by *Connor*, then access will be granted by the Probation Department upon submission to the
20 Probation Department of the approved Authorization Form, signed by the probationer; and (4) if the
21 court approves of granting CLERB access to non-confidential, non-personal portions of a
22 probationer’s reports, files, and records if CLERB is unable to obtain a signed Authorization Form
23 because the probationer is deceased then, upon submission of sufficient proof of death by CLERB
24 to the Probation Department, the Probation Department will redact all personal information and all
25 confidential information from the probation reports, files, and records and submit them to the court,
26 ex parte, for review and determination whether CLERB may have access to the reports, files, and
27 records as redacted. A copy of the stipulation and proposed Authorization Form are attached to this
28 order as Exhibit 1.

1 Based on the above, the court finds there is good cause to allow CLERB to view and copy
2 portions of certain probation reports, files, and records relative to CLERB's investigatory
3 jurisdiction. CLERB shall be entitled to view and copy probation reports, files, and records as
4 follows:

5 1. The court approves of the use of the proposed Authorization Form as drafted. (See
6 Exhibit 1.) Changes to the content of this form may only be made upon written authorization of the
7 court, and any use of an amended Authorization Form without prior written authorization is invalid.

8 2. If CLERB presents to the Probation Department a court-approved Authorization Form,
9 signed by a probationer who is the subject of the probation reports, files, and records to be viewed
10 or copied, then the Probation Department shall permit CLERB to view and copy all non-
11 confidential information contained in that probationer's reports, files, and records, including
12 probation reports filed with the court. In such cases, Probation shall allow the viewing and copying
13 of "personal" information in the probation reports, files, and records as described in *Connor, supra*,
14 including but not limited to family background, medical and psychological conditions, financial
15 status, military record, and history of substance abuse. The Probation Department shall keep a copy
16 of the signed Authorization Form in the probationer's records.

17 3. If CLERB presents to the Probation Department sufficient proof of death of a probationer
18 consisting of a death certificate, medical examiner's report, or a declaration signed by a CLERB
19 investigator or other designee of CLERB under penalty of perjury, then the Probation Department
20 shall: (a) redact the probationer's personal information, as defined by *Connor, supra*, including but
21 not limited to family background, medical and psychological conditions, financial status, military
22 record, and history of substance abuse, and (b) submit the redacted copies to the court for review,
23 ex parte, prior to release to CLERB. Upon court approval of the proposed redactions, the Probation
24 Department shall permit CLERB to view and copy the redacted documents.

25 4. Before allowing CLERB to view or copy any probation reports, files, or records, the
26 Probation Department shall redact all confidential information from the probation reports, files, and
27 records, including but not limited to all victim information, confidential informant information, and
28 confidential investigatory information.

1 5. Should CLERB dispute any of the Probation Department's redactions of personal and/or
2 confidential information from the Probation Department's reports, files, and records, regardless of
3 whether the redactions were approved by the court, CLERB may set a hearing in Department 102 of
4 the Central Courthouse, 1100 Union St., with written notice of the hearing date and a list of the
5 disputed redactions or documents provided to the Probation Department at least five court days
6 before the hearing. At any such hearing, the Probation Department shall produce for the court, to
7 review in camera, unredacted copies of the disputed documents.

8 6. CLERB's access to and use of the information obtained under this order is limited to the
9 work of CLERB within its investigatory jurisdiction as noted above. Any employee or
10 representative of CLERB who reviews probation reports, files, or records obtained under this order
11 shall be advised by CLERB of the terms and conditions of this order.

12 7. Information obtained pursuant to this order is to be kept in a confidential manner and
13 shall not be released to any person or entity outside of CLERB, except as permitted by law or
14 further court order.

15 8. Any unauthorized disclosure of information obtained pursuant to this order or failure to
16 comply with the terms and conditions of this order may result in vacation of this order and may be
17 punishable as contempt of court.

18 9. CLERB and the Probation Department shall submit any future proposed changes to, or
19 rescission of, their stipulation to the court in writing, with notice to the other party to the stipulation.

20 10. This order is not intended to replace, nullify, or conflict with any existing policies of the
21 San Diego Superior Court, the Probation Department, or any other public or private agency.

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11. This order does not preclude CLERB from requesting the court grant access to probation reports, files, and records in individual cases not otherwise addressed by this order.

This order shall become effective on January 1, 2024, and expire on December 31, 2024, unless otherwise ordered by this court.

IT IS SO ORDERED.

DATED: December 27, 2023



HONORABLE MICHAEL T. SMYTH
PRESIDING JUDGE

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EXHIBIT 1

1 Charter section 606 and Administrative Code section 340 et seq. In sum, CLERB receives and
2 investigates complaints regarding alleged wrongdoing or misconduct of peace officers or custodial
3 officers performing their duties while employed by the County of San Diego's Sheriff's Department
4 or Probation Department. CLERB also investigates certain types of incidents within its jurisdiction
5 involving the death of an individual, the discharge of a firearm, or use of force, and peace officers or
6 custodial officers performing their duties while employed by the County of San Diego's Sheriff's
7 Department or Probation Department, regardless of whether a complaint is filed. Some of those
8 complaints or incidents involve individuals with an adult probation file(s) from a prior, pending, or
9 current term(s) of probation.

10 Under Penal Code section 1203.05(b), upon filing a petition and obtaining a court order, any
11 person may inspect or copy the probation officer's report filed with the court. Under Penal Code
12 section 1203.10(a), the court's probation file or record, which includes the probation officer's records
13 filed with the court, shall at all times be open to the inspection by any person allowed access by court
14 order. In addition *People v. Connor* (2004) 115 Cal.App.4th 669, requires that the subject of the
15 report has notice of the petition for access to his or her file and of the opportunity to object and be
16 heard.

17 CLERB and the Probation Department stipulate that CLERB's access to the Non-Confidential
18 portions of probation reports, files, and records, including "personal" information as defined by
19 *Connor*, may substantially assist CLERB in conducting investigations within its jurisdiction. CLERB
20 and the Probation Department stipulate that if the Court finds good cause to use an authorization form
21 that [1] gives an individual probationer notice of CLERB's standing petition requesting access to the
22 Non-Confidential portions of the probationer's reports, files, and records, including "personal"
23 information as defined by *Connor*, as well as notice of probationer's right to object and be heard, and
24 [2] allows a probationer to waive the right to object or be heard (hereinafter "Authorization Form"), a
25 copy of which is attached herein as Exhibit A, then the notice requirement in *Connor* is deemed
26 satisfied by said Authorization Form. CLERB and the Probation Department further agree that any
27 change to the content of the Authorization Form shall only be made pursuant to written approval by
28 the Court.

1 CLERB and the Probation Department stipulate that if [a] the Court finds good cause to grant
2 CLERB access to Non-Confidential portions of probation reports, files, or records under Penal Code
3 sections 1203.05(b) and 1203.10(a), and [b] the court grants the Probation Department authority to
4 release the Non-Confidential portions of probation reports, files, or records, including "personal"
5 information as defined by *Connor*, upon CLERB's submission of a signed Authorization Form to the
6 Probation Department, and the Probation Department's redaction of any and all victim information
7 contained therein, then access for viewing and copying shall be granted.

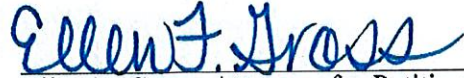
8 CLERB and the Probation Department further stipulate if CLERB has jurisdiction over an
9 incident in which the probationer did not initiate the complaint and the Authorization Form is unable
10 to be signed because the probationer is deceased, CLERB may access the Non-Confidential portions
11 of probation reports, files, or records, not including "personal" information as defined by *Connor*,
12 upon a presentation of sufficient proof of death to the Probation Department that the probationer is
13 deceased, such as a death certificate, medical examiner's report, or a declaration under penalty of
14 perjury from a CLERB investigator or other CLERB designee. In these instances, CLERB and the
15 Probation Department further stipulate that the Probation Department shall redact the deceased
16 probationer's personal information, as defined by *Connor*, as well as any and all victim information
17 from Non-Confidential portions of probation reports, files, or records. However, all Non-Confidential
18 portions of probation reports, files, or records subject to production shall be reviewed by the Court in

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1 camera, to ensure compliance with *Connor* and victim privacy, prior to the Probation Department's
2 release of said information to CLERB. Said in camera review shall be conducted *ex parte*.

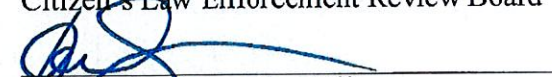
3 SO STIPULATED.

4 Dated: 12/20/2023



Ellen F. Gross, Attorney for Petitioner
Citizen's Law Enforcement Review Board

6 Dated: 12-20-23



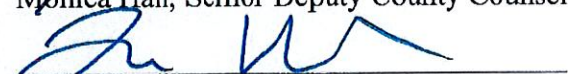
Paul Parker, Executive Officer
Citizen's Law Enforcement Review Board

8 Dated: 12-20-23



Monica Hall, Senior Deputy County Counsel

10 Dated: 12/20/23



Tamika Nelson, Chief Probation Officer
County of San Diego Probation Department

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1 reports, files and records requested, including but not limited to family background,
2 medical and psychological conditions, financial status, military record, and history of
3 substance abuse;

4 c. I understand that *People v. Connor*, 115 Cal.App.4th 669 (2004) (“*Connor*”) affords
5 me the right to a hearing to object to the release of such “personal” information;

6 d. **I hereby waive my right to a *Connor* hearing and my right to object to the release
7 of personal information contained within my probation reports, files and records
8 to CLERB.**

9 2. I understand CLERB must obtain a court order to access my probation reports, files and
10 records pursuant to Penal Code sections 1203.05 and 1203.10. **I do not object to the issuance of
11 such order for the following case(s):**

12 _____;

13 3. I understand CLERB’s responsibilities and duties are enumerated in the County of San
14 Diego Charter section 606 and Administrative Code sections 340 et seq. In summary, CLERB
15 receives and investigates complaints regarding alleged wrongdoing or misconduct of peace officers or
16 custodial officers performing their duties while employed by the County of San Diego’s Sheriff’s
17 Department or Probation Department. CLERB also investigates certain types of incidents within its
18 jurisdiction involving the death of an individual, the discharge of a firearm, or use of force, and peace
19 officers or custodial officers performing their duties while employed by the County of San Diego’s
20 Sheriff’s Department or Probation Department, regardless of whether a complaint is filed. I
21 understand CLERB’s access to the Non-Confidential portions of probation reports, files and records,
22 including “personal” information as defined by *Connor*, may substantially assist CLERB in
23 conducting investigations within its jurisdiction.

24 4. I am aware that the information that identifies me in the probation reports, files and
25 records will be used solely for the purposes stated herein and CLERB is prohibited from further
26 releasing my “personal” information.

27 5. No one has told me I must not object to the release of my personal information. No one
28 has promised or suggested that I will receive anything of value, or be treated more favorably by San

1 Diego County or any of its employees, officers, or agents because I did not object to the release of my
2 personal information.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct, and that this declaration is executed on this ___ day of
5 _____, 20 __, at San Diego, California.

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